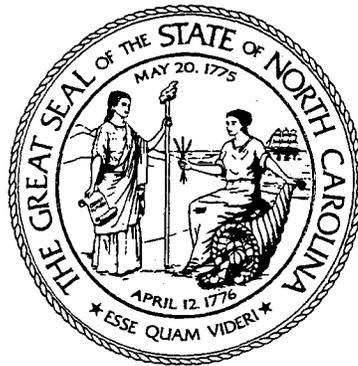


LEGISLATIVE RESEARCH COMMISSION

CONSUMER PROTECTION COMMITTEE



REPORT TO THE
2000 SESSION OF THE
1999 GENERAL ASSEMBLY
OF NORTH CAROLINA

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

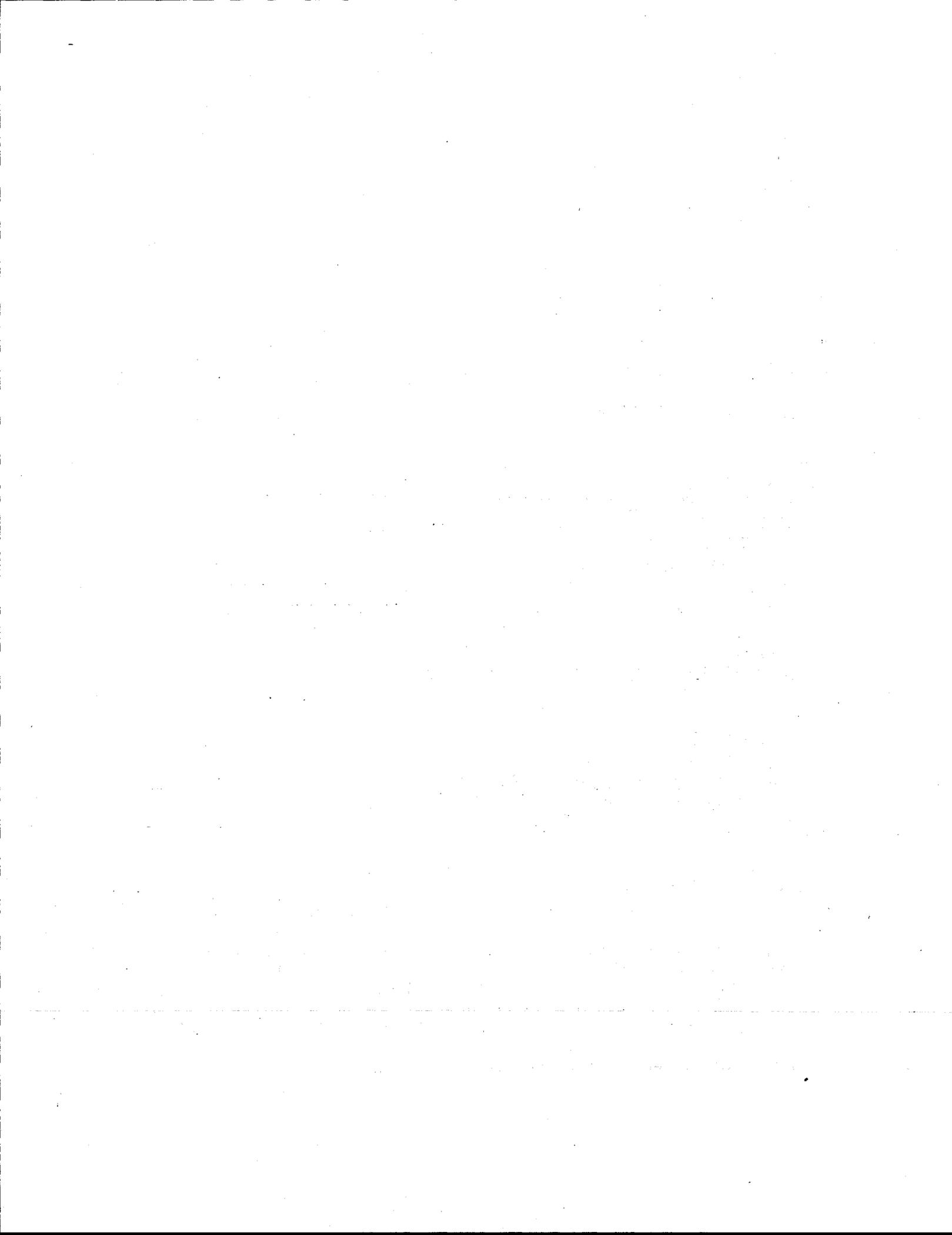
ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

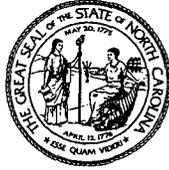
ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

LETTER OF TRANSMITTAL	i
LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP	ii
PREFACE.....	1
COMMITTEE PROCEEDINGS	3
FINDINGS AND RECOMMENDATIONS.....	14
APPENDICES	
<u>APPENDIX A</u>	
RELEVANT PORTIONS OF THE 1999 STUDIES BILLS, CHAPTER 395 OF THE 1999 SESSION LAWS (FIRST SESSION, 1999).....	17
SENATE BILL 1137.....	19
HOUSE JOINT RESOLUTION 1451	21
SENATE BILL 570.....	22
HOUSE BILL 95.....	26
 <u>APPENDIX B</u>	
MEMBERSHIP OF THE LRC COMMITTEE ON CONSUMER PROTECTION.....	30
 <u>APPENDIX C</u>	
ARTICLE 15 OF CHAPTER 53 NORTH CAROLINA CONSUMER FINANCE ACT.....	31
S.L.1997-391 (ARTICLE 22 OF CHAPTER 53) CHECK-CASHING BUSINESSES.....	46
 <u>APPENDIX D</u>	
LEGISLATIVE PROPOSAL.....	51
A BILL TO BE ENTITLED AN ACT TO REVISE THE APPLICABLE INTEREST RATES ON LOANS MADE PURSUANT TO THE CONSUMER FINANCE ACT UNDER CERTAIN CIRCUMSTANCES, TO ESTABLISH A LOAN PROCESSING FEE FOR CERTAIN LOANS, TO ALLOW BORROWERS TO CANCEL LOANS UNDER CERTAIN CIRCUMSTANCES, TO ALLOW LENDERS TO CHARGE A LATE PAYMENT PENALTY UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, AND TO ALLOW LENDER TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE DISKS.	
ANALYSIS OF LEGISLATIVE PROPOSAL.....	57



STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601



May 4, 2000

TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY (REGULAR SESSION 2000):

The Legislative Research Commission herewith submits to you for your consideration its 2000 interim report on CONSUMER PROTECTION ISSUES. The report was prepared by the Legislative Research Commission's Committee on CONSUMER PROTECTION pursuant to G.S. 120-30.17(1).

Respectfully submitted;

A handwritten signature in cursive script that reads "James B. Black".

James B. Black
Speaker of the House

A handwritten signature in cursive script that reads "Marc Basnight".

Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission



1999 - 2000

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of
the Senate
Marc Basnight, Cochair

Senator Austin M. Allran
Senator Linda D. Garrou
Senator Jeanne H. Lucas
Senator R.L. "Bob" Martin
Senator Ed N. Warren

Speaker of the House
of Representatives
James B. Black, Cochair

Rep. James W. Crawford, Jr.
Rep. Beverly M. Earle
Rep. Verla C. Insko
Rep. William L. Wainwright
Rep. Steve W. Wood



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1998 Session and 1999 Sessions, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Consumer Protection Issues was authorized by Section 2.1(10)(a), (b), and (d) of Chapter 395 of the 1999 Session Laws (Regular Session, 1999). Part II of Chapter 395 authorized the Legislative Research Commission to study topics set forth in that Part and to consider any applicable bill or resolution that originally proposed the study in determining the nature, scope and aspects of the study. Section 2.1(10) of Chapter 395 authorizes the study of

several issues relating to consumer protection including, the higher cost of credit; cash-out transactions used by some check cashing businesses (Senate Bill 1137); and cash converter regulation (House Bill 1451). Senate Bill 1137 is entitled "AN ACT TO REQUIRE LICENSEES TO DEPOSIT CHECKS AFTER THE CHECKS HAVE BEEN CASHED AND TO CLARIFY THE AGGREGATE AMOUNT ALLOWED FOR POSTDATED OR DELAYED DEPOSIT CHECKS". Section 1 of House Bill 1451 authorizes the Legislative Research Commission to "study issues related to the regulation of cash converters, which are businesses that purchase or trade property for resell from persons who are not licensed wholesale merchants." The relevant portions of Chapter 395, Senate Bill 1137, and House Bill 1451 are included in Appendix A.

The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Consumer Protection Grouping area under the direction of Representative Beverly Earle. The Committee was chaired by Senator Daniel Clodfelter and Representative John W. Hurley. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Consumer Protection Committee met five times prior to the 2000 Regular Session of the 1999 General Assembly. The Committee was charged with studying several issues relating to consumer protection in the financial services area. The first issue referred to the committee is the higher cost of credit, including consideration of whether there is any basis to revise the Consumer Finance Act.

The second issue under the committee's charge is "cash-out" transactions used by some check-cashing businesses. Senate Bill 1137, introduced during the 1999 Session, was referred to this committee. The bill proposed to amend the law relating to licensees of check cashing businesses to require that licensees deposit checks no later than 31 days from the date the check is cashed and shall not return the check to the customer for cash. There is evidence that use of this practice has allowed some check cashing businesses to circumvent the law.

The final issue assigned to this committee is cash converter regulation. House Bill 1451 authorized the LRC to study issues related to the regulation of cash converters, which are businesses that purchase or trade property for resale from persons who are not licensed wholesale merchants.

The committee focused on the higher cost of credit and check cashing businesses. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

February 2, 2000

The initial meeting of the Consumer Protection Committee was held on February 2, 2000, at 10:30 a.m. in Room 1428 of the Legislative Building. Representative Beverly Earle, the LRC member assigned to the Committee, opened the meeting and introduced the two cochairs, Representative Hurley and Senator Clodfelter. Senator Clodfelter noted that he became

interested in consumer credit issues while working on Senate Bill 570 during the 1999 Session. Senate Bill 570 proposed some revisions in the Consumer Finance Act, relating to the interest rate structure and also adjusted some consumer protection features of loans made under the Act. Senator Clodfelter indicated that after looking at the myriad of laws governing various kinds of consumer lending, his interest expanded to consider whether there was some way to simplify the structure and oversight of consumer credit.

Representative Hurley presided over the first meeting, and recognized Committee Counsel, Karen Cochrane Brown to explain the Committee's charge. Next, the chair introduced Mr. Reitzel Deaton, Consumer Finance Administrator in the Office of Commissioner of Banks to report on the role of the Office of Commissioner of Banks in supervising certain lenders and providing consumer protection. Mr. Deaton began by presenting an overview of the North Carolina Consumer Finance Act. He noted that the law has been in effect since 1961, and that it authorizes the Commissioner of Banks to license and supervise loan companies which make direct consumer loans of \$10,000 or less. The Act allows licensees to choose to make loans under one of two sections. G.S. 53-173 applies to licensees who make loans of \$3,000 or less. It allows maximum interest charges of 36% per year on the first \$600 of a loan and 15% on the portion which is between \$600 and \$3,000. G.S. 53-176 applies to optional rate lenders, or those who make loans of \$10,000 or less. This section permits maximum interest charges of 30% per year on the first \$1,000 of the loan and 18% on the portion which is between \$1,000 and \$7,500. If the balance is more than \$7,500, the maximum rate is 18% per year on the entire loan. Mr. Deaton informed the Committee that there are currently 654 licensed lenders; 46 general lenders and 608 optional rate lenders. Mr. Deaton presented a sample loan and discussed the total costs including the impact of credit insurance.

Mr. Deaton then moved to a description of the regulation of check cashing businesses. Article 22 of Chapter 53 was enacted in 1997, and authorizes the Commissioner of Banks to

license and supervise check cashing businesses. The law sets the maximum fees that may be charged for this service and permits a licensee to accept a postdated or delayed deposit check, under certain circumstances. Mr. Deaton indicated that the Commissioner had issued a Declaratory Ruling on certain aspects of the law and that he had just completed the rulemaking process. Mr. Deaton stated that there are currently 215 licensees in the state with 1,114 locations. The Commissioner's Office is conducting examinations of these businesses in order to prepare a report to the 2001 General Assembly.

Finally, Mr. Deaton discussed Tax Refund Anticipation Loan Facilitators. The law requires facilitators who offer tax refund loans to register with the Commissioner of Banks. A facilitator is typically a tax preparation business which obtains loans from banks. The loans are, in effect, secured by the customer's tax refund. This law was enacted in 1989.

February 16, 2000

The second meeting of the Committee was devoted to a review of concerns under the Consumer Finance Act. Senator Clodfelter presided, and the Committee heard presentations from several industry representatives, as well as from consumer representatives and from the Attorney General's Office.

Three individuals represented the industry. Richard Carlton, Counsel to the North Carolina Financial Services Association, was the first presenter. Mr. Carlton noted that his organization represented optional rate lenders doing business in the State. He noted that this is a highly regulated industry that is subject to state licensing and supervision as well as federal laws such as the Fair Credit Reporting Act and the Equal Credit Opportunity Act. Mr. Carlton further indicated that the last time a rate adjustment was made in the law was 1983.

Next, Mr. Roney Lamm, Senior Vice President and Director of Industry Relations for CitiFinancial, was introduced. Mr. Lamm presented some demographic information about the

average consumer finance customer in North Carolina. He noted that the industry provides both secured and unsecured personal loans to modest income North Carolinians. Fifty-one percent of the loans made are between \$1,000 and \$3,000, and the average loan is \$1,856. Mr. Lamm stressed that the industry's operating expenses and losses from bankruptcy had increased considerably in the 17 years since the interest rate was last adjusted. He urged the Committee to consider the industry's need for relief.

The final industry presenter was Mr. Denis O'Toole, Vice President, Household International. Mr. O'Toole addressed several policy issues, including the fact that recent federal legislation allows banks, securities firms and insurance companies to get into one another's businesses. He indicated that the industry wants to remain state regulated, but as national companies they do have choices. These companies find that they are increasingly operating at a regulatory disadvantage compared to competitors who are increasingly using either federal bank or thrift charters to compete for customers.

Next, the Committee heard a report on consumer concerns under the Consumer Finance Act, presented by Rob Schofield, Staff Attorney, North Carolina Justice and Community Development Center. Mr. Schofield noted that current interest rates are at a lower level than when the law was last adjusted in 1983, and that the rate increase, which the industry seeks, would mean bigger loans at higher prices for consumers. Mr. Schofield recommended that the Committee do three things; 1) review the practices of credit insurance sales and loan "flipping"; 2) conduct an independent analysis and confirmation of the claims of the industry that they are doing poorly in North Carolina; and 3) review the practices and rates of other lenders such as check cashers, pawnbrokers, etc.

Finally, the Chair recognized Special Deputy Attorney General Alan Hirsch to make a presentation on behalf of the Consumer Protection Section of the Department of Justice. Mr. Hirsch stated that the Attorney General's Office has studied the questions of interest rates and

their effect on the economy and the people of North Carolina for many years. The Attorney General's Office requested information on the profitability of the industry to see if there was a need for increased rates. The information was analyzed by a Certified Public Accountant who concluded that this is a very profitable industry. Consumer finance offices have more profits on a percentage basis than banks. Mr. Hirsch also noted that 80% of loans include credit insurance, which is an extremely profitable product. Mr. Hirsch indicated that when the maximum interest rate was increased in 1983, the prime interest rate was 18%, which meant that the cost of money for lenders was extraordinarily high. While it is true that inflation has increased other costs, the cost of money has gone down significantly since that time.

Senator Clodfelter asked the three presenting groups if elimination of the blended rate structure, currently in the law, would be an issue the Committee should consider. The three groups were in agreement that this should be considered. Just before adjourning the meeting, Senator Clodfelter indicated that the next meeting would be devoted to a discussion of payday lenders and check cashers.

March 1, 2000

The third meeting of the Consumer Protection Committee was held on March 1, 2000. Representative Hurley presided at the meeting, which focused on the issue of Check Cashers. Committee Counsel, Karen Cochrane Brown, was recognized to give a brief overview of the law. The law was enacted in 1997 and authorized the Commissioner of Banks to license and supervise those engaged in the business of check cashing. The law sets licensing requirements and limits on the amount which can be charged for this service. Significantly, the law also allows the cashing of postdated or delayed deposit checks, so long as the face amount does not exceed \$300. This is the most controversial portion of the law. The customer and the licensee must enter a written agreement, which states the fees charged both as a dollar amount and as an

effective annual percentage rate, and the deposit may not be deferred for more than 31 days. The maximum fee under this provision is 15% of the check. This provision sunsets on July 31, 2001, and the Commissioner is directed to report to the 2001 General Assembly on the practices of licensees with regard to postdated and delayed deposit checks.

Mr. Jim Blair, Legislative Chair, North Carolina Check Cashers Association, was introduced to review the industry concerns under the Check Casher Act. Mr. Blair indicated that his association feels that the law is serving the industry and consumers well. Mr. Blair described the demographics of the average customer and stated that they are people who have decided to use check-cashing stores as an alternative means of obtaining money to meet short-term needs for small amounts. Mr. Blair also indicated that the N.C. Check Cashers Association has been working with consumers to ensure they act responsibly. Approximately 80% of the stores access a program called Tellatrack that alerts the check casher if the individual has an outstanding check with another store.

The Committee then heard from several presenters who reported on consumer concerns under the Check Cashers Act. Ms. Elizabeth Ouzts, Public Interest Advocate, North Carolina Public Interest Research Group (NCPIRG), opined that the failure of the banking industry to serve all consumers fairly has created a void in the marketplace that the predatory lending industry is rapidly filling. According to the most recent government data, 13.2% of families do not even maintain a checking account and 83% of those families have incomes less than \$25,000. Many families who cannot afford bank accounts go to check cashing stores where they pay high fees to cash checks and buy money orders to conduct basic financial transactions. Ms. Ouzts indicated that her organization made three recommendations; 1) that an interest rate cap comparable to that used for consumer finance licensees be applied to check casher, 2) that the Commissioner of Banks ensure that all licensees are abiding by the Truth in Lending Act, and 3)

that lenders be required to perform background checks on customers, and create a 30 day waiting period between the termination of one loan and the start of another.

Bob Bullock, Staff Attorney with Catawba Valley Legal Services, then presented a fictional story based on a composite of his clients' experiences. These people often become trapped in a perpetual cycle of debt, repeatedly returning to the check cashing company. Mr. Bullock indicated a waiting period of at least a couple of days should be built into the law to ensure one check clears the bank before another transaction is made, to avoid this cycle.

Ms. Octavia Rainey, a citizen with personal experience with check cashers, offered a perspective of the way check cashing businesses target certain low-income neighborhoods for intense marketing. She encouraged members of the Committee to visit the check cashing businesses in their communities.

Mr. Dick Hatch, AARP Representative, made the final presentation on behalf of consumers. Mr. Hatch stated that AARP is concerned about access to affordable financial services for persons of all ages and income levels, in rural and urban area, regardless of whether they have access to traditional banking services. A large number of older people fall into the low and moderate income categories, making them vulnerable to abusive financial practices by the fringe banking industry. With regard to check cashers, AARP urges the Committee to limit the fee (for delayed deposit checks) to an interest rate cap equivalent to an APR of 36% on the amount received by the borrower plus a one time administrative fee of five dollars per loan.

The Chair then recognized Phil Lehman, an attorney with the Consumer Protection Section of the Department of Justice, to present on behalf of the Attorney General's Office. Mr. Lehman stated that they had four main objectives when the law was passed. Those objectives were; 1) to ensure the offices were licensed, regulated and supervised by the Commissioner of Banks; 2) to disclose these transactions as loans with the interest and annual percentage rates to borrowers; 3) to limit the rates; and 4) to prohibit rollovers, so these transactions would not turn into revolving

lines of credit. The main purpose of the law was to allow individuals to have access to a small amount of credit for a very short period of time to take care of emergencies. Although the annual percentage rate on delayed deposit checks can be as high as 400%, the rate is not an issue unless a consumer uses these services on a repetitive basis.

Deputy Commissioner of Banks Otis Meacham advised the Committee that action has been taken against numerous check cashers for violation of the law, and consumers have been refunded over \$300,000. Mr. Meacham also indicated that the Commissioner would present a report to the 2001 General Assembly as required by law, and would include recommendations if the Committee so requested. It was also recommended that the Attorney General's Office review the Commissioner's report and make recommendations to the General Assembly.

March 29, 2000

The Consumer Protection Committee met again on March 29, 2000. Senator Clodfelter presided. The Committee resumed discussions relating to the Consumer Finance Act. Senator Clodfelter began by reminding the Committee of the two categories of lenders under the Act. At a previous meeting, the Committee heard from the optional rate lenders. At this meeting the Committee heard a presentation on behalf of the Resident Lenders Association, which represents the smaller lenders.

Senator Clodfelter introduced Charles Barbour, with the Resident Lenders Association. Mr. Barbour expressed his Associations hope that the Committee would recommend that House Bill 95 be adopted by the Senate. He then turned the presentation over to his consultants. The Association has retained the consulting firm of RSM McGladrey, Inc., to provide accounting and other services to its members. Mr. Bill Alexander and Mr. Morris Marshburn, from RSM McGladrey, presented an overview of the industry in North Carolina. They noted that Resident Lenders are smaller locally owned and operated, independent businesses. They provide credit

services that would not otherwise be available to many North Carolina families. North Carolina interest rates are among the lowest in the region. The industry has suffered because bankruptcies are at record levels, and operating expenses continue to increase while rate charges have not increased.

The Chair then recognized Karen Cochrane Brown, Committee Counsel, to present a review of House Bill 95. The bill was passed by the House during the 1999 Session and is currently in the Senate, awaiting consideration. The Chair noted that the bill is not technically before the Committee, but the discussion might be helpful to the Senate members of the Committee. House Bill 95 made rate adjustments for small lenders operating under G.S. 53-173, and created a loan processing fee equal to 5% of the loan not to exceed \$25.

In response to an earlier request by the Committee, Karen Cochrane Brown provided a description of the South Carolina consumer lending laws. Interest rates were deregulated there, in 1982. For most lenders, under South Carolina law, there are no maximum rates. A supervised lender is only required to file its rates with the Department of Consumer Affairs and post the rate in its place of business. According to South Carolina regulators, the biggest problem they have experienced since deregulation is the increase in automobile title lenders, who routinely file, post and charge 300% APR on automobile secured loans.

The Chair then returned the discussion to the Consumer Finance Act, and referred to Senate Bill 570, which had been supported by the optional rate lenders. Senator Clodfelter noted that there had been a number of discussions among the interested parties to see if a compromise could be reached. Although the parties had not reached agreement, the lenders had come forward with a new proposal. The Chair asked the Committee to hear the proposal, discuss it, and authorize the staff to prepare a report to the LRC, on which the Committee would vote at its next meeting. Thereafter, the Committee Counsel gave the Committee a brief overview of the draft proposal. The draft changes the rate concept to a step system and eliminates the blended

rate concept. The draft also proposes a \$50 loan origination fee and authorizes a late payment penalty. It also authorizes borrowers to cancel loans within 15 days, and directs lenders to make additional disclosures.

Mr. Richard Carlton, Counsel with the N.C. Financial Services Association, and Mr. Roney Lamm, Senior Vice President, Director Industry Relations with CitiFinancial, spoke in support of the proposal.

The Committee recommended several changes to the proposal and staff was directed to include these changes in the draft report.

Several people responded to the draft proposal. Mr. Rob Schofield, Staff Attorney with the N.C. Justice and Community Development Center, indicated that although the elimination of the blended rate system is an improvement, the overall cost to consumers is increased by including the origination fee and the late payment penalty. Mr. Alan Hirsch, Special Deputy Attorney General, N.C. Department of Justice, stated it is his Office's judgement that this is a highly profitable industry and at this point he sees no evidence that the rate increases are necessary. If the draft were truly revenue neutral including the origination and late fees, the Attorney General's Office would be in favor of it. Ms. Susan Lupton, Project Director, Coalition for Responsible Lending, indicated that the coalition is opposed to changes that would increase rates to consumers. She noted that the coalition is also very concerned about abuses in the sale and financing of credit insurance in connection with a variety of loan products.

The Committee directed staff to prepare a report, including the proposed legislation. The Committee then agreed to meet again on April 24, 2000, to vote on whether to approve the report.

April 24, 2000

The last meeting of the Consumer Protection Committee prior to the convening of the 2000 Session of the General Assembly, took place on April 24, 2000, at 10:00 a.m. in Room 1228 of the Legislative Building. During this meeting the Committee discussed and approved the interim report to be submitted to the Legislative Research Commission.



FINDINGS AND RECOMMENDATIONS

The Consumer Protection Committee made the following findings and recommendations regarding the Consumer Finance Act:

FINDINGS

1. The Consumer Finance industry provides a necessary and valuable service by providing access to credit to many North Carolinians, who might not otherwise be able to obtain credit from other sources.
2. The maximum interest rates authorized by the Consumer Finance Act have not been amended since 1983. At that time, interest rates were very high and the General Assembly determined that it was appropriate to establish the current rate structure. Since 1983, interest rates have reduced significantly, but operating expenses and losses, resulting from bankruptcies, have increased.
3. The Consumer Finance Act does not authorized licensees under the Act to charge any fees other than a credit investigation fee. Most other lenders in this State can charge a processing fee to recoup the costs associated with making the loan, and late payment fees.
4. North Carolina consumers benefit from interest rates that are among the lowest in our geographic region.
5. The interest rate structure for optional rate lenders currently contained in the Consumer Finance Act is confusing and misleading. It is difficult for a consumer to determine what the

maximum rate applicable to a given loan would be, simply by reading the law. The blended rate structure serves no useful purpose and should be eliminated.

RECOMMENDATIONS

Based on the findings, the Committee recommends the following proposed legislation:

Proposal

A BILL TO BE ENTITLED AN ACT TO REVISE THE APPLICABLE INTEREST RATES ON LOANS MADE PURSUANT TO THE CONSUMER FINANCE ACT UNDER CERTAIN CIRCUMSTANCES, TO ESTABLISH A LOAN PROCESSING FEE FOR CERTAIN LOANS, TO ALLOW BORROWERS TO CANCEL LOANS UNDER CERTAIN CIRCUMSTANCES, TO ALLOW LENDERS TO CHARGE A LATE PAYMENT PENALTY UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, AND TO ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE DISKS.

The Committee made the following findings and recommendations regarding the Check Cashers Act:

FINDINGS

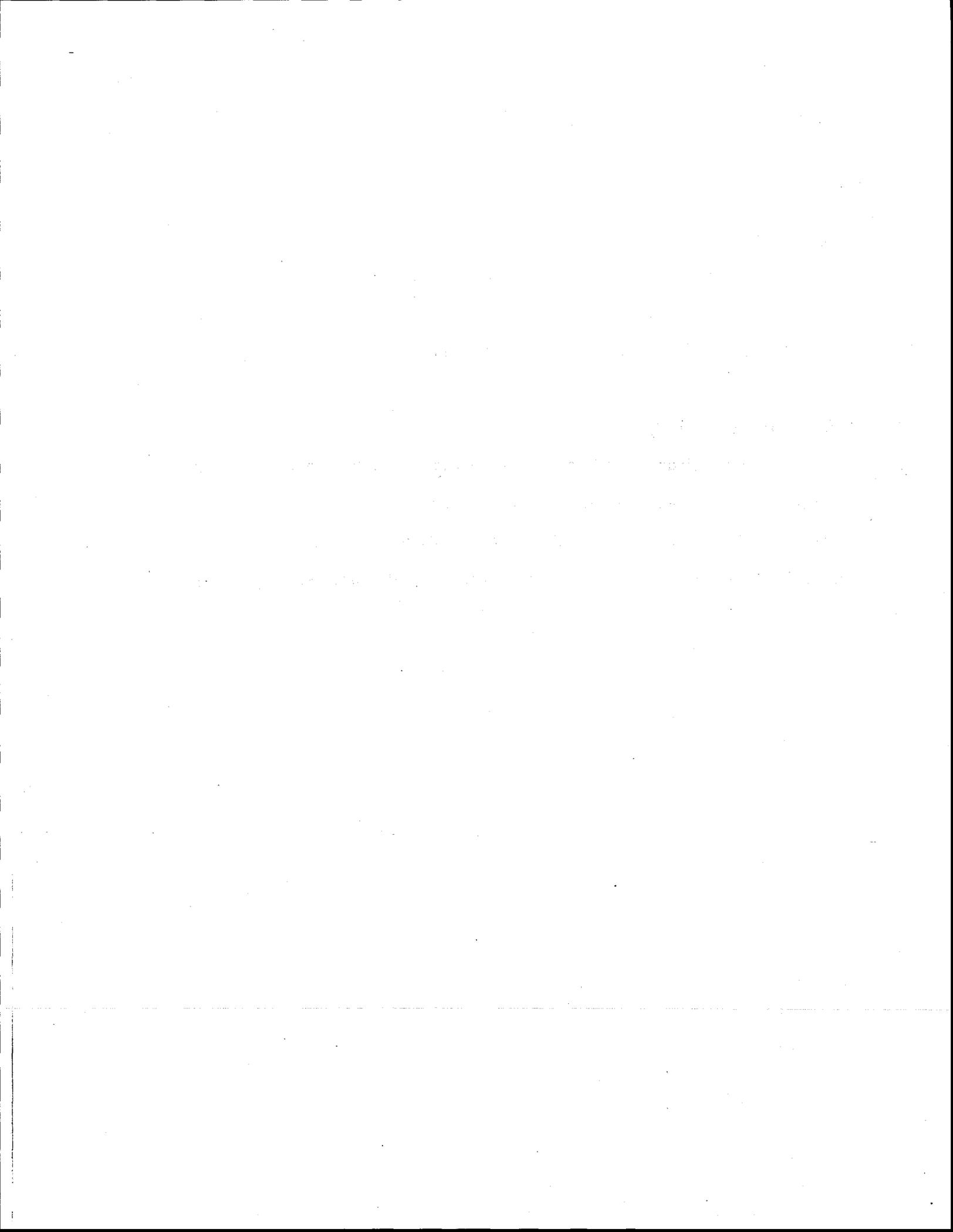
1. The Check Cashers Act has been in effect for slightly more than two years. In that time, the Commissioner of Banks has licensed 215 businesses, operating in 1,114 locations.
2. The law clearly prohibits the making of loans or extensions of credit by licensees, except as provided in the postdated or delayed deposit provision of the law. Notwithstanding this fact,

There is evidence that some licensees are extending loans beyond the 31 days authorized by the law, by means of "cash out" transactions.

3. The law directs the Commissioner of Banks "to report to the 2001 General Assembly on the practices of licensees with regard to checks cashed pursuant to the provisions of G.S. 53-281, including any evidence as to consumer complaints, unfair or deceptive trade practices, and the frequency of repeat use by individuals of postdated or delayed deposit checks."

RECOMMENDATIONS

Based on its findings, the Committee recommends that the General Assembly not take any action to amend the Act until the 2001 Session, when it receives the Commissioner of Banks report. The Committee further recommends that the Attorney General's Office be requested to review the Commissioner's report and make any recommendations it deems appropriate.



APPENDICES



APPENDIX A

CHAPTER 395 1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

...

(10) Consumer protection issues:

a. Higher cost of credit including (Clodfelter):

1. A review of the licensing and regulatory supervision of credit sources subject to statutory interest or fee limitations other than the usury act (G.S. 24) and retail installment sales act (G.S. 25);
2. The adequacy of consumer protections afforded to borrowers of these lenders both instate and federal law;
3. Whether legal differences in loan terms, regulation and consumer protections of similar credit products offered by federally chartered sources of credit and those lenders licensed by state agencies should be addressed in state law to create parity in the credit market;
4. Whether programs exist or should be initiated to educate the public to promote personal financial literacy;
5. Whether marketplace competition, state regulations or law are sufficient to ensure the availability of lower-cost credit for high risk borrowers who have improved their credit worthiness;
6. Whether consumers who seek high-cost credit are subjected to abusive lending practices or suffer adverse economic consequences as a result of obtaining high-cost loans.

b. Cash-out transactions used by some check cashing businesses (S.B. 1137 - Martin of Guilford, Shaw of Guilford) and pawn shops.

...

d. Cash converter regulation (H.B. 1451 - Hurley).

...

Section 2.2. Committee Membership. -- For each Legislative Research Commission committee created during the 1999-2001 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Section 2.3. Reporting Date. -- For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1999 General Assembly, 2000 Regular Session, or the 2001 General Assembly.

Section 2.4. Funding. -- From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

...
PART XXII.-----BILL AND RESOLUTIONS REFERENCES

Section 22.1. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:03 p.m. this 5th day of August, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1137

Short Title: Prohibit Cash-Out Transactions.

(Public)

Sponsors: Senators Martin of Guilford, Shaw of Guilford; Ballance, Dannelly, Forrester, Kinnaird, Odom, Phillips, Purcell, Rand, Soles, Warren, and Wellons.

Referred to: Commerce.

April 15, 1999

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE LICENSEES TO DEPOSIT CHECKS AFTER THE
3 CHECKS HAVE BEEN CASHED AND TO CLARIFY THE AGGREGATE
4 AMOUNT ALLOWED FOR POSTDATED OR DELAYED DEPOSIT CHECKS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 53-281 reads as rewritten:
7 "**§ 53-281. Postdated or delayed deposit checks.**
8 (a) A licensee may defer the deposit of a personal check cashed for a customer for
9 up to 31 days pursuant to the provisions of this section.
10 (b) The face amount of ~~any~~ postdated or delayed deposit ~~check~~ checks cashed
11 pursuant to this section for a customer shall not exceed in the aggregate three
12 hundred dollars (\$300.00).
13 (c) Each postdated or delayed deposit check cashed by a licensee shall be
14 documented by a written agreement that has been signed by the customer and the
15 licensee. The written agreement shall contain a statement of the total amount of any
16 fees charged, expressed both as a dollar amount and as an effective annual percentage
17 rate (APR). The written agreement shall authorize the licensee to defer deposit of the
18 personal check until a specific date not later than 31 days from the date the check is
19 cashed.
20 (d) A licensee shall not directly or indirectly charge any fee or other consideration
21 for cashing a postdated or delayed deposit check in excess of fifteen per cent (15%)
22 of the face amount of the check.

1 (e) No check cashed under the provisions of this section shall be repaid by the
2 proceeds of another check cashed by the same licensee or any affiliate of the licensee.
3 A licensee shall not, for any consideration, renew or otherwise extend any postdated
4 or delayed check or withhold such check from deposit for any period beyond the
5 time set forth in the written agreement with the customer.

6 (f) If a licensee has delayed deposit of a check pursuant to this section, the
7 licensee must deposit the check not later than 31 days from the date the check is
8 cashd and shall not return that check to the customer in return for cash. The
9 Commissioner may order and impose civil penalties upon any person required to be
10 licensed under this Article for violations of this subsection pursuant to G.S. 53-286
11 and may suspend or revoke the license of the person for violations of this subsection
12 pursuant to G.S. 53-284."

13 Section 2. This act becomes effective October 1, 1999, and applies to
14 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE JOINT RESOLUTION 1451

Sponsors: Representative Hurley.

Referred to: Rules, Calendar and Operations of the House.

April 29, 1999

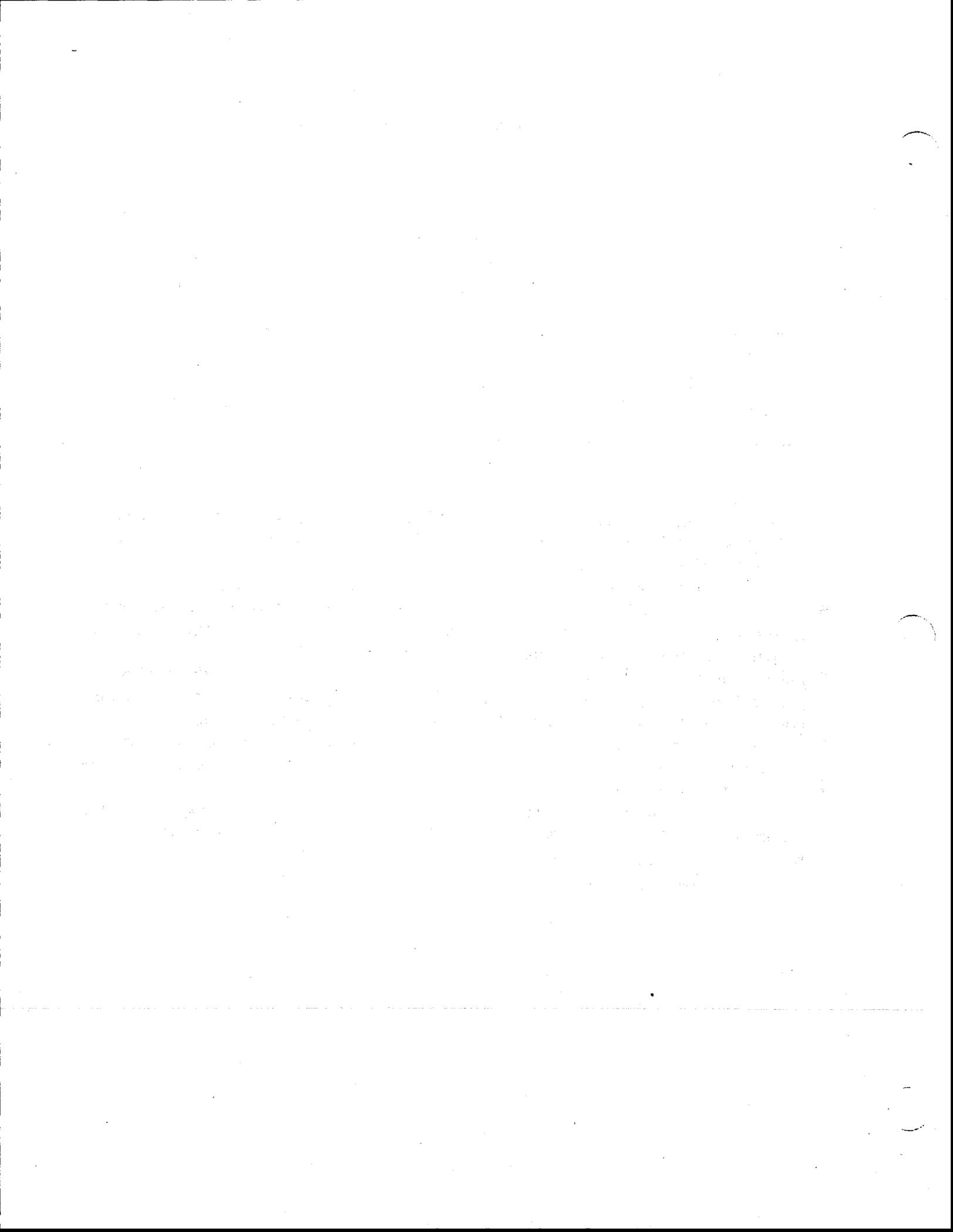
1 A JOINT RESOLUTION TO AUTHORIZE THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY ISSUES RELATED TO THE REGULATION OF
3 CASH CONVERTERS.

4 Be it resolved by the House of Representatives, the Senate concurring:

5 Section 1. The Legislative Research Commission may study issues related
6 to the regulation of cash converters, which are businesses that purchase or trade
7 property for resell from persons who are not licensed wholesale merchants. The
8 purpose of the study shall be to protect the citizens of the State from those who steal
9 personal property and resell that property for money or trade that property for other
10 goods. In conducting the study, the Commission may consult with local and State
11 law enforcement to determine whether there is a need for State regulation of cash
12 converters to prevent or stop the purchase, trade, or acquisition of stolen goods for
13 resale in the State.

14 Section 2. The Legislative Research Commission may make an interim
15 report to the 1999 General Assembly, 2000 Regular Session, and shall make a final
16 report to the 2001 General Assembly.

17 Section 3. This resolution is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

2

SENATE BILL 570

Finance Committee Substitute Adopted 5/26/99

Short Title: Update Consumer Finance Act.

(Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

1
2 AN ACT TO UPDATE THE NORTH CAROLINA CONSUMER FINANCE ACT
3 TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN
4 CIRCUMSTANCES, TO ALLOW BORROWERS TO CANCEL LOANS
5 UNDER CERTAIN CONDITIONS, TO INCREASE CERTAIN FEES, TO
6 INCREASE THE LIABILITY AMOUNTS OF INADVERTENT LOANS IN THE
7 LAW RESTRICTING MULTIPLE-OFFICE LOANS, TO REQUIRE
8 DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR
9 NEGOTIABLE CHECKS, TO ALLOW LENDERS TO MAINTAIN CERTAIN
10 RECORDS IN THE FORM OF OPTICAL IMAGE DISKS, AND TO SPECIFY
11 A MAXIMUM CHARGE THAT LENDERS MAY ASSESS AT CLOSING.

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 53-165(a) reads as rewritten:

14 "(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the
15 charges authorized either by ~~G.S. 53-173~~ G.S. 53-173 or G.S. 53-176."

16 Section 2. G.S. 53-168(b) reads as rewritten:

17 "(b) Investigation of Applicants. -- Upon the receipt of an application, the
18 Commissioner shall investigate the facts. If the Commissioner determines from such
19 preliminary investigation that the applicant does not satisfy the conditions set forth in
20 subsection (a), he shall so notify the applicant who shall then be entitled to an
21 informal hearing thereon provided he so requests in writing within 30 days after the
22 Commissioner has caused the above-referred to notification to be mailed to the
23 applicant. In the event of a hearing, to be held in the offices of the Commissioner of

1 Banks in Raleigh, the Commissioner shall reconsider the application and, after the
2 hearing, issue a written order granting or denying such application. At the time of
3 making such application, the applicant shall pay the Banking Department the sum of
4 ~~two hundred fifty dollars (\$250.00)~~ two hundred seventy-five dollars (\$275.00) as a
5 fee for investigating the application, which shall be retained irrespective of whether
6 or not a license is granted the applicant."

7 Section 3. G.S. 53-176 reads as rewritten:

8 "**§ 53-176. Optional rates, maturities and amounts.**

9 In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and
10 for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in
11 installments not exceeding ten thousand dollars (\$10,000) and which shall not be
12 repayable in less than six months or more than 84 months and which shall not be
13 secured by deeds of trust or mortgages on real estate and which are repayable in
14 substantially equal consecutive monthly payments and to charge and collect interest
15 in connection therewith which shall not exceed the following actuarial rates:

16 (1) ~~With rates of thirty percent (30%) per annum on that part of the~~
17 unpaid principal balance not exceeding two thousand dollars
18 (\$2,000) with respect to a loan not exceeding ten thousand dollars
19 (\$10,000) seven thousand five hundred dollars (\$7,500), thirty
20 percent (30%) per annum on that part of the unpaid principal
21 balance not exceeding one thousand dollars (\$1,000) and eighteen
22 percent (18%) per annum on the remainder of the unpaid
23 principal balance. Interest shall be contracted for and collected at
24 the single simple interest rate applied to the outstanding balance
25 that would earn the same amount of interest as the above rates for
26 payment according to schedule.

27 (2) ~~With respect to a loan exceeding seven thousand five hundred~~
28 ~~dollars (\$7,500), eighteen percent (18%) per annum on the~~
29 ~~outstanding principal balance.~~

30 In addition to the interest permitted in this section, a licensee may assess at closing
31 a ~~reasonable credit investigation loan charge as agreed upon by the parties, not to~~
32 ~~exceed the actual cost of the credit investigation; twenty-five dollars (\$25.00);~~
33 ~~provided that such charges may not be assessed to the same borrower more than~~
34 ~~twice in any 12-month period. The Commissioner of Banks may review charges~~
35 ~~assessed pursuant to this section and may adopt appropriate rules in accordance with~~
36 ~~G.S. 53-185. period, and which may be included in the original principal balance of~~
37 the loan and shall be earned when the loan is made.

38 The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f),
39 (g), (h) and (i) shall apply to loans made pursuant to this section.

40 Any licensee under this Article shall have the right to elect to make loans in
41 accordance with this section by the filing of a written statement to that effect with the
42 Commissioner and on date of such notification begin making loans regulated by this
43 section for the following 12 months. Annually after such election a licensee may elect

1 to make loans in accordance with this section unless the licensee notifies in writing
2 the Commissioner of its intention to terminate such election.

3 The due date of the first monthly payment shall not be more than 45 days
4 following the disbursement of funds under any such installment loan. A borrower
5 under this section may prepay all or any part of a loan made under this section
6 without penalty. A borrower, no more than twice in a 12-month period with the
7 same licensee, may cancel a loan within 15 calendar days after disbursement of the
8 loan proceeds to the borrower without incurring or paying interest so long as the
9 amount of the loan, minus any fees or charges, is returned to or received by the
10 licensee.

11 No individual, partnership, or corporate licensee and no corporation which is the
12 parent, subsidiary or affiliate of a corporate licensee that is making loans under this
13 Article except as authorized in this section, shall be permitted to make loans under
14 the provisions of this section. Any corporate licensee or individual or partnership
15 licensee that elects to make loans in accordance with the provisions of this section
16 shall be bound by that election with respect to all of its offices and locations in this
17 State and all offices and locations in this State of its parent, subsidiary or affiliated
18 corporate licensee, or with respect to all of his or their offices and locations in this
19 State."

20 Section 4. G.S. 53-179 reads as rewritten:

21 **§ 53-179. Multiple-office loan limitations.**

22 A licensee shall not grant a loan under this Article in one office to any borrower
23 who already has a loan in another ~~office~~ office, licensed under this Article, operated
24 by the same entity or by an affiliate, parent, subsidiary or under the same ownership,
25 management or control, whether partial or ~~complete~~. complete for the purpose, or
26 with the effect, of obtaining charges in excess of those authorized by this Article. This
27 section shall apply to intrastate and interstate operations. A licensee shall take every
28 reasonable precaution to prevent granting loans in violation of this section. Such
29 loans granted inadvertently resulting in a total liability of ~~three thousand dollars~~
30 ~~(\$3,000)~~ six thousand dollars (\$6,000) or less, shall be adjusted to the rates applicable
31 under the Article to a single loan of equivalent amount, and when the total liability
32 on such loans is in excess of ~~three thousand dollars (\$3,000)~~, six thousand dollars
33 (\$6,000), interest shall be adjusted to simple interest at eight percent (8%) per annum
34 on the entire obligation."

35 Section 5. G.S. 53-181(a) is amended by adding a new subdivision to
36 read:

37 "(10) In addition to any disclosures otherwise provided by law, a licensee
38 soliciting loans using facsimile or negotiable checks shall disclose
39 the following:

40 'THIS IS A SOLICITATION FOR A LOAN. READ THE
41 ENCLOSED DISCLOSURES BEFORE SIGNING THIS
42 AGREEMENT.'

43 This notice shall be printed in not less than 10-point bold
44 type and shall appear conspicuously on the offer."

1 Section 6. G.S. 53-182(b) reads as rewritten:

2 "(b) Upon payment of any loan in full, a licensee shall cancel and return to the
3 borrower, within a reasonable length of time, originals or copies of any note,
4 assignment, mortgage, deed of trust, or other instrument securing such loan, which no
5 longer secures any indebtedness of the borrower to the licensee."

6 Section 7. G.S. 53-184(a) reads as rewritten:

7 "(a) Each licensee shall maintain all books and records relating to loans made
8 under this Article required by the Commissioner of Banks to be kept, and the
9 Commissioner, his deputy, or duly authorized examiner or agent or employee is
10 authorized and empowered to examine such records at any reasonable time. Such
11 books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~
12 disk, optical disk, or other form of computer, electronic or microfilm media available
13 for examination on the basis of computer printed reproduction, video display or other
14 medium acceptable to the Commissioner of Banks; provided, however, that such
15 books and records so kept must be convertible into clearly legible tangible documents
16 within a reasonable time. Any licensee having more than one licensed office may
17 maintain such books and records at a location other than the licensed office location
18 if such location is approved by the Commissioner; provided that, upon such
19 requirements as may be imposed by the Commissioner of Banks, there shall be
20 available to the borrower at each licensed location or such other location convenient
21 to the borrower, as designated by the licensee, complete loan information; and
22 provided further that such books and records of each licensed office shall be clearly
23 segregated. When a licensee maintains its books and records outside of North
24 Carolina, the licensee shall make them available for examination at the place where
25 they are maintained and shall pay for all reasonable and necessary expenses incurred
26 by the Commissioner in conducting such examination. Where the data processing for
27 any licensee is performed by a person other than the licensee, the licensee shall
28 provide to the Commissioner of Banks a copy of a binding agreement between the
29 licensee and the data processor which allows the Commissioner of Banks, his deputy,
30 or duly authorized examiner or agent or employee to examine that particular data
31 processor's activities pertaining to the licensee to the same extent as if such services
32 were being performed by the licensee on its own premises; and, notwithstanding the
33 provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the
34 licensee shall reimburse the Commissioner of Banks for all costs and expenses
35 incurred by ~~him~~ the Commissioner in such examination."

36 Section 8. This act becomes effective October 1, 1999, and applies to
37 loans made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 95

Short Title: Small Loan Revisions.

(Public)

Sponsors: Representatives Michaux; and Luebke.

Referred to: Financial Institutions, if favorable, Finance.

February 17, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE CONSUMER FINANCE ACT TO INCREASE THE
3 AMOUNT OF LOANABLE ASSETS REQUIRED BEFORE AN ENTITY IS
4 LICENSED TO ENGAGE IN BUSINESS IN THE STATE, TO REVISE THE
5 AMOUNT OF, AND MAXIMUM RATE OF INTEREST FOR, SMALL LOANS,
6 TO ESTABLISH A LOAN PROCESSING FEE FOR CERTAIN LOANS, TO
7 REPEAL OBSOLETE PROVISIONS OF LAW, AND TO MAKE
8 CONFORMING CHANGES.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 53-168 reads as rewritten:

11 **"§ 53-168. License required; showing of convenience, advantage and financial**
12 **responsibility; investigation of applicants; hearings; existing businesses; contents of**
13 **license; transfer; posting.**

14 (a) Necessity for License; Prerequisites to Issuance. -- No person shall engage in or
15 offer to engage in the business regulated by this Article unless and until a license has
16 been issued by the Commissioner of Banks, and the Commissioner shall not issue any
17 such license unless and until ~~he~~ the Commissioner finds:

- 18 (1) That authorizing the applicant to engage in such business will
19 promote the convenience and advantage of the community in
20 which the applicant proposes to engage in business; and
21 (2) That the financial responsibility, experience, character and general
22 fitness of the applicant are such as to command the confidence of
23 the public and to warrant the belief that the business will be

1 operated lawfully and fairly, within the purposes of this Article;
2 and

3 (3) That the applicant has available for the operation of such business
4 at the specified location loanable assets of at least ~~twenty-five~~
5 ~~thousand dollars (\$25,000).~~ fifty thousand dollars (\$50,000).

6 (b) Investigation of Applicants. -- Upon the receipt of an application, the
7 Commissioner shall investigate the facts. If the Commissioner determines from such
8 preliminary investigation that the applicant does not satisfy the conditions set forth in
9 subsection (a), ~~he~~ the Commissioner shall so notify the applicant who shall then be
10 entitled to an informal hearing thereon provided he so requests in writing within 30
11 days after the Commissioner has caused the above-referred to notification to be
12 mailed to the applicant. In the event of a hearing, to be held in the offices of the
13 Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application
14 and, after the hearing, issue a written order granting or denying such application. At
15 the time of making such application, the applicant shall pay the Banking Department
16 the sum of two hundred fifty dollars (\$250.00) as a fee for investigating the
17 application, which shall be retained irrespective of whether or not a license is granted
18 the applicant.

19 ~~(e) Existing Business. -- Notwithstanding the provisions of this section, any person,~~
20 ~~firm or corporation which, on December 31, 1973, was a licensee under this Article~~
21 ~~either as a licensee to make loans under the provisions of G.S. 53-173 or as a motor~~
22 ~~vehicle lender under G.S. 53-176.1, may surrender such license to the Commissioner~~
23 ~~within 90 days after May 25, 1974, and elect to become a licensee to make loans~~
24 ~~under either G.S. 53-173 or 53-176.1 but not both. Such license shall be issued by the~~
25 ~~Commissioner without further application or investigation and the licensee shall be~~
26 ~~deemed a licensee under the category that it elects upon the surrender of its current~~
27 ~~license and the election.~~

28 (d) Required Assets Available. -- Each licensee shall continue at all times to have
29 available for the operation of the business at the specified location loanable assets of
30 at least ~~twenty-five thousand dollars (\$25,000).~~ fifty thousand dollars (\$50,000). The
31 requirements and standards of this subsection and subsection (a)(2) of this section
32 shall be maintained throughout the period of the license and failure to maintain such
33 requirements or standards shall be grounds for the revocation of a license under the
34 provisions of G.S. 53-171 of this Article.

35 (e) License, Posting, Continuing. -- Each license shall state the address at which
36 the business is to be conducted and shall state fully the name of the licensee, and if
37 the licensee is a copartnership, or association, the names of the members thereof, and
38 if a corporation, the date and place of its incorporation. Transfer or assignment of a
39 license by one person to another by sale or otherwise is prohibited without the prior
40 approval of the Commissioner. Each license shall be kept posted in the licensed place
41 of business. Each license shall remain in full force and effect until surrendered,
42 revoked, or suspended as hereinafter provided."

43 Section 2. G.S. 53-173 reads as rewritten:

1 "§ 53-173. Maximum rate of charge; interest and fee; computation of charges; interest;
2 limitation on interest after judgment; limitation on interest after maturity of the loan.

3 (a) Maximum Rate of Charge. Interest. -- Every licensee hereunder may contract
4 for, compute, and receive on any loan of money, not exceeding ~~three thousand~~
5 ~~dollars (\$3,000)~~ six thousand dollars (\$6,000) in amount, ~~charges interest~~ at rates not
6 exceeding ~~thirty six percent (36%)~~ thirty percent (30%) per annum on that part of
7 the unpaid principal balance of any loan not in excess of ~~six hundred dollars~~
8 ~~(\$600.00)~~ and fifteen percent (15%) one thousand eight hundred dollars (\$1,800) and
9 eighteen percent (18%) per annum on any remainder of such unpaid principal
10 balance. Interest shall be contracted for and collected at the single simple interest
11 rate applied to the outstanding balance that would earn the same amount of interest
12 as the above rates for payment according to schedule.

13 (a1) Maximum Fee. -- In addition to the interest authorized in subsection (a) of
14 this section, a licensee making loans under this section may collect from the borrower
15 a fee for processing the loan equal to five percent (5%) of the cash advance, not to
16 exceed twenty-five dollars (\$25.00).

17 (b) Computation of Charges. Interest. -- ~~Charges Interest~~ on loans made pursuant
18 to this section shall not be paid, deducted, or received in advance. Such ~~charges~~
19 ~~interest~~ shall not be compounded but ~~charges interest~~ on loans shall (i) be computed
20 and paid only as a percentage of the unpaid principal balance or portion thereof and
21 (ii) computed on the basis of the number of days actually elapsed; provided, however,
22 if part or all of the consideration for a loan contract is the unpaid principal balance
23 of a prior loan, then the principal amount payable under the loan contract may
24 include any unpaid ~~charges interest~~ on the prior loan which have accrued within 90
25 days before the making of the new loan contract. For the purpose of computing
26 ~~charges, interest,~~ a day shall equal 1/365th of a year. Any payment made on a loan
27 shall be applied first to any accrued interest and then to principal, and any portion or
28 all of the principal balance may be prepaid at any time without penalty.

29 (c) Limitation on Interest after Judgment. -- If judgment be obtained against any
30 party on any loan made under the provisions of this section neither the judgment nor
31 the loan shall carry, from the date of the judgment, any interest in excess of eight
32 percent (8%) per annum.

33 (d) Limitation of Interest after Maturity of Loan. -- After the maturity date of any
34 loan contract made under the provisions of this section and until the loan contract is
35 paid in full by cash, new loan, refinancing or otherwise, no charges other than
36 interest at eight percent (8%) per annum shall be computed or collected from any
37 party to the loan upon the unpaid principal balance of the loan.

38 (e) Repealed by Session Laws 1989, c. 17, s. 3.

39 ~~(f) Subject to the limitations contained in this Article as to maximum rates, the~~
40 ~~Commission may from time to time, upon the basis of changed conditions or facts,~~
41 ~~redetermine and refix any such maximum rates of charge, but, before determining or~~
42 ~~redetermining any such maximum rates, the Commission shall give reasonable notice~~
43 ~~of its intention to consider doing so to all licensees and a reasonable opportunity to~~
44 ~~be heard and introduce evidence with respect thereto. The notice herein required~~

~~1 may be given by mailing such notice to the offices of the licensees as shown in the
2 records of the Commissioner of Banks. Any such changed maximum rates of charge
3 shall not affect preexisting loan contracts lawfully entered into between any licensee
4 and any borrower."~~

5 Section 3. G.S. 53-165(a) reads as rewritten:

6 "(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the
7 charges interest authorized by G.S. 53-173."

8 Section 4. This act becomes effective October 1, 1999, and applies to
9 loans made on or after that date.

APPENDIX B

CONSUMER PROTECTION COMMITTEE (LRC)

1999-2001

S.L. 1999-395

Pro Tem's Appointments

Sen. Daniel Clodfelter, Cochair
100 N. Tryon St., 47th Floor
Charlotte, NC 28202
(704) 331-1041

Sen. Luther Jordan, Jr.
PO Box 930
Wilmington, NC 28402
(910) 763-2441

Sen. Eleanor Kinnaird
PO Box 25397
Raleigh, NC 27611
(919) 856-2200

Sen. William Martin
PO Box 21325
Greensboro, NC 27601-2808
(336) 373-1530

Sen. Fountain Odom
1100 S. Tryon St., 4th Floor
Charlotte, NC 28203
(704) 372-4800

Sen. Robert Shaw
PO Box 8101
Greensboro, NC 27419
(336) 855-7533

Speaker's Appointments

Rep. John W. Hurley, Cochair
PO Box 714
Fayetteville, NC 28303
(910) 483-6210

Rep. Leslie Cox
PO Box 3001
Sanford, NC 27331
(919) 718-1998

Mr. James Crawford, III
111 Edgewater Lane
Henderson, NC 27536

Rep. Pryor Gibson
717 Mountford Ave.
Raleigh, NC 27603
(919) 872-8198

Rep. Gregg Thompson
PO Box 574
Spruce Pine, NC 28777
(828) 765-1998

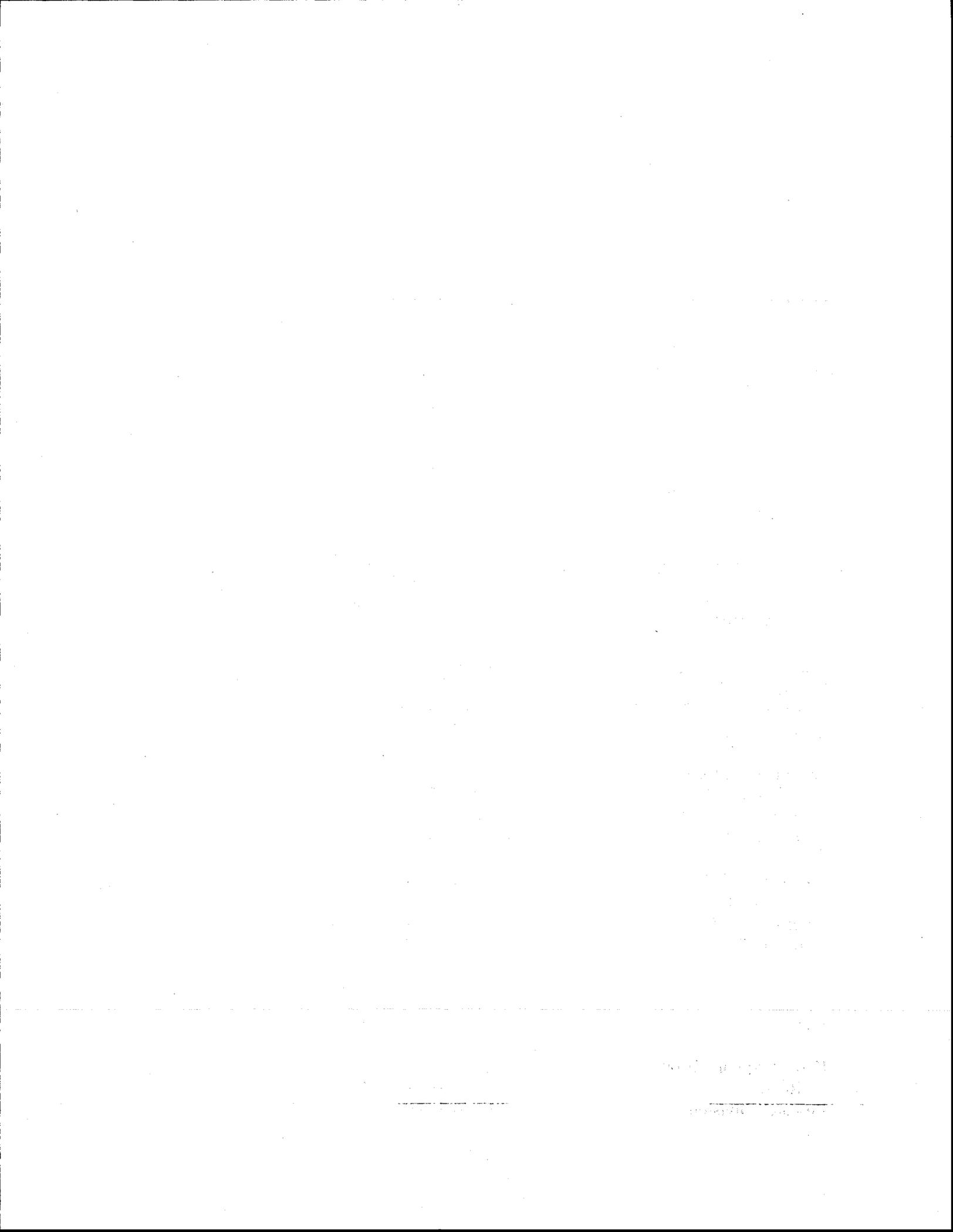
Rep. Larry Womble
1294 Salem Lake Road
Winston-Salem, NC 27107
(336) 784-9373

Staff

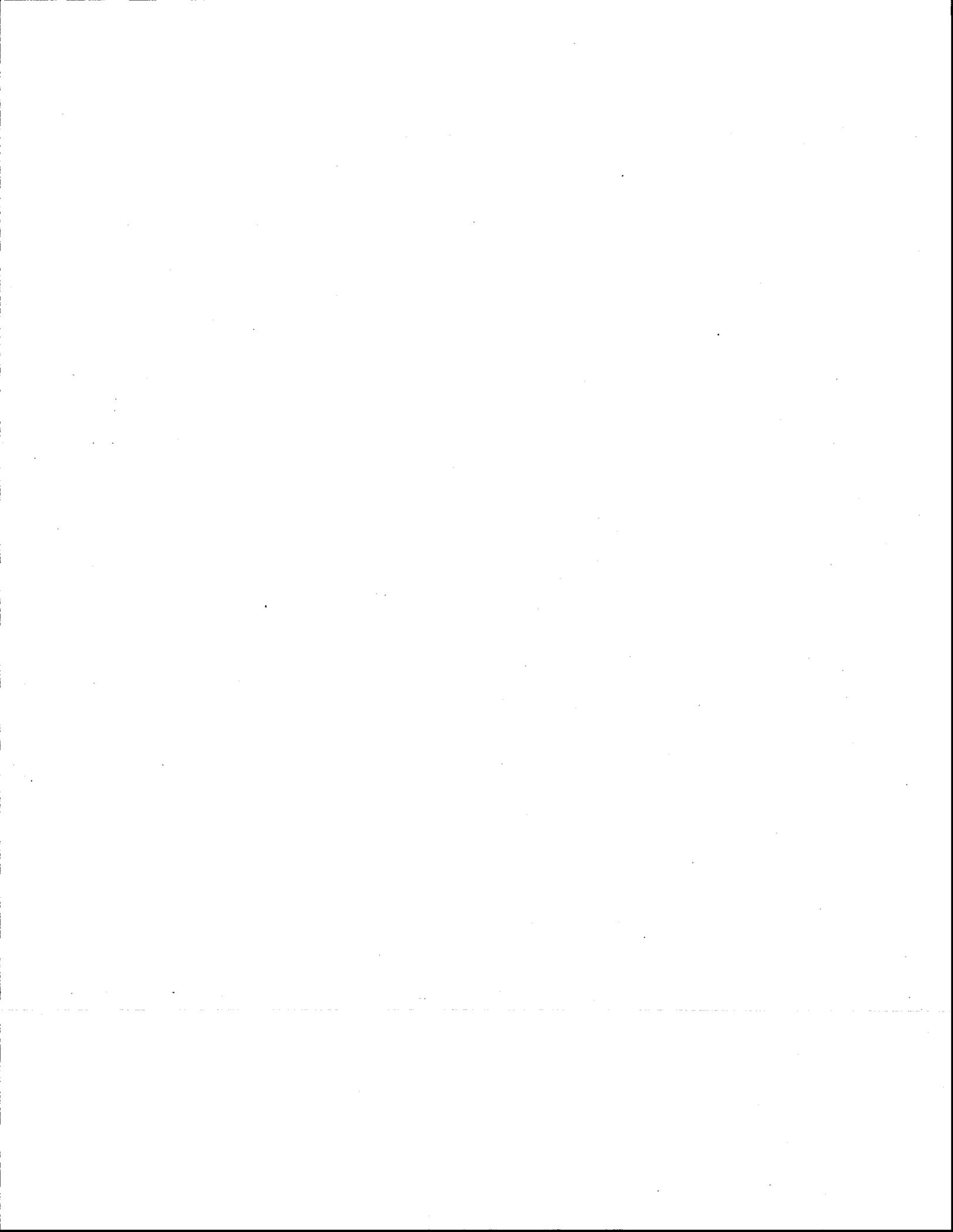
Karen Cochrane-Brown
Ed Rossi
Research Division

Clerk

Melissa Riddle
(919) 733-5601



APPENDIX C



ARTICLE 15 of CHAPTER 53

North Carolina Consumer Finance Act.

§53-164. Title.

This Article shall be known and may be cited as the North Carolina Consumer Finance Act. (1961, c. 1053, s. 1.)

§53-165. Definitions.

- (a) "Amount of the loan" shall mean the aggregate of the cash advance and the charges authorized by G.S. 53-173.
- (b) "Borrower" shall mean any person who borrows money from any licensee or who pays or obligates himself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.
- (c) "Cash advance" shall mean the amount of cash or its equivalent that the borrower actually receives or is paid out at his discretion or on his behalf.
- (d) "Commission" shall mean the State Banking Commission.
- (e) "Commissioner" shall mean the Commissioner of Banks.
- (f) "Deputy commissioner" shall mean the deputy commissioner of banks.
- (g) "License" shall mean the certificate issued by the Commissioner under the authority of this Article to conduct a consumer finance business.
- (h) "Licensee" shall mean a person to whom one or more licenses have been issued.
- (i) "Loanable assets" shall mean cash or bank deposits or installment loans made as a licensee pursuant to this Article or installment loans made as a licensee pursuant to the Article which this Article supersedes or such other loans payable on an installment basis as the Commissioner of Banks may approve, or any combination of two or more thereof.
- (j) "Person" shall include any person, firm, partnership, association or corporation. (1957, c. 1429, s. 1; 1961, c. 1053, s. 1.)

§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.

(a) Scope. -- No person shall engage in the business of lending in amounts of ten thousand dollars (\$10,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. -- The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession. -- Any person not exempt from this Article, or any officer, agent, employee or representative thereof, who fails to comply with or who otherwise violates any of the provisions of this Article, or any regulation of the Banking Commission adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each such violation shall be considered a separate offense. It shall be the duty of the Commissioner of Banks to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in his actual or constructive possession, and to testify as to such facts upon the trial of any person for any such offense.

(d) Additional Penalties. -- Any contract of loan, the making or collecting of which violates any provision of this Article, or regulation thereunder, except as a result of accidental or bona fide error of computation shall be void and the licensee or any other party in violation shall have no right to collect, receive or retain any principal or charges whatsoever with respect to such loan. If an affiliate operating in the same office or subsidiary operating in the same office of a licensee makes a loan in violation of G.S. 53-180(i) such affiliate or subsidiary may recover only its principal on such loan. (1955, c. 1279; 1957, c. 1429, s. 8; 1961, c. 1053, s. 1; 1969, c. 1303, ss. 13, 14; 1973, c. 47, s. 2; c. 1042, s. 1; 1979, c. 33, s. 1; 1985, c. 154, ss. 6, 13; 1987, c. 444, s. 3; 1989, c. 17, ss. 1, 13; 1989 (Reg. Sess., 1990), c. 881, s. 1; 1993, c. 539, s. 425; 1994, Ex. Sess., c. 24, s. 14(c).)

§53-167. Expenses of supervision.

Each licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and his agents in supervising them, shall pay to the Commissioner of Banks the fees prescribed in G.S. 53-122 at the times therein specified. (1955, c. 1279; 1957, c. 1429, s. 1; 1961, c. 1053, s. 1.)

§ 53-168. License required; showing of convenience, advantage and financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.

(a) Necessity for License; Prerequisites to Issuance. -- No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner of Banks, and the Commissioner shall not issue any such license unless and until he finds:

(1) That authorizing the applicant to engage in such business will promote the convenience and advantage of the community in which the applicant proposes to engage in business; and

(2) That the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly, within the purposes of this Article; and

(3) That the applicant has available for the operation of such business at the specified location loanable assets of at least twenty-five thousand dollars (\$25,000).

(b) Investigation of Applicants. -- Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a), he shall so notify the applicant who shall then be entitled to an informal hearing thereon provided he so requests in writing within 30 days after the Commissioner has caused the above-referred to notification to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying such application. At the time of making such application, the applicant shall pay the Banking Department the sum of two hundred fifty dollars (\$250.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

(c) Existing Business. -- Notwithstanding the provisions of this section, any person, firm or corporation which, on December 31, 1973, was a licensee under this Article either as a licensee to make loans under the provisions of G.S. 53-173 or as a motor vehicle lender under G.S. 53-176.1, may surrender such license to the Commissioner within 90 days after May 25, 1974, and elect to become a licensee to make loans under either G.S. 53-173 or 53-176.1 but not both. Such license shall be issued by the Commissioner without further application or investigation and the licensee shall be deemed a licensee under the category that it elects upon the surrender of its current license and the election.

(d) Required Assets Available. -- Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least twenty-five thousand dollars (\$25,000). The requirements and standards of this subsection and subsection (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain such requirements or standards shall be grounds for the revocation of a license under the provisions of G.S. 53-171 of this Article.

(e) License, Posting, Continuing. -- Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership, or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as hereinafter provided. (1961, c. 1053, s. 1; 1969, c. 1303, s. 15; 1973, c. 1042, s. 2; 1981, c. 671, s. 15; 1987, c. 827, s. 12.)

§53-169. Application for license.

The application for license shall be made on a form prepared and furnished by the Commissioner

of Banks and shall state:

- (1) The fact that the applicant desires to engage in business under this Article; and
- (2) Whether the applicant is an individual, partnership, association or corporation; and
- (3) The name and address of the person who will manage and be in immediate control of the business; and
- (4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and
- (5) When the applicant proposes to commence doing business; and
- (6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf. (1961, c. 1053, s. 1.)

§53-170. Locations; change of ownership or management.

(a) Business Location. -- A licensee may conduct and carry on his business only at such location or locations as may be approved by the Commissioner of Banks, and no changes shall be made from one location to another without the approval of the Commissioner.

(b) Additional Places of Business. -- Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this Article governing issuance of a single license.

(c) Change of Location, Ownership or Management. -- If any change occurs in the name and address of the licensee or of the president, secretary or agent of a corporation, or in the membership of any partnership under said sections, a true and full statement of such change, sworn to in the manner required by this Article in the case of the original application, shall forthwith be filed with the Commissioner. (1961, c. 1053, s. 1.)

§53-171. Revocation, suspension or surrender of license.

(a) If the Commissioner shall find, after due notice and hearing, or opportunity for hearing, that any such licensee, or an officer, agent, employee, or representative thereof has violated any of the provisions of this Article, or has failed to comply with the rules, regulations, instructions or orders promulgated by the Commission pursuant to the powers and duties prescribed therein, or has failed or refused to make its reports to the Commissioner, or has failed to pay the fees for its examination and supervision, or has furnished false information to the Commissioner or the Commission, the Commissioner may issue an order revoking or suspending the right of such licensee and such officer, agent, employee or representative to do business in North Carolina as a licensee, and upon receipt of such an order from the Commissioner, the licensee shall immediately surrender his license to the Commissioner. Within five days after the entry of such an

order the Commissioner shall place on file his findings of fact and mail or otherwise deliver a copy to the licensee. Any licensee who fails to make any loans during any period of 90 consecutive days after being licensed shall surrender his license to the Commissioner.

(b) Any licensee may surrender any license by delivering it to the Commissioner with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(c) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any obligor.

(d) The Commissioner, in his discretion, may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked, or surrendered if and when he determines no fact or condition exists which clearly would have justified the Commissioner in refusing originally to issue such license under this Article. (1955, c. 1279; 1961, c. 1053, s. 1.)

§ 53-172. Conduct of other business in same office.

(a) No licensee shall conduct the business of making loans under this Article within any office, suite, room, or place of business in which any other business is solicited or transacted. Installment paper dealers as defined in G.S. 105-83, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being any other business within the meaning of this section.

(b) Notwithstanding subsection (a) of this section, the Commissioner may authorize in writing the solicitation and transaction of other business in any office, suite, room, or place of business in which a licensee is conducting the business of making loans if the Commissioner determines that the other business would not be contrary to the best interests of the borrowing public.

(c) The Commissioner may require, consistent with the provisions of 12 C.F.R. Part 226 (Regulation Z) of the federal Truth-In-Lending Act, the other business authorized under subsection (b) of this section to:

- (1) Disclose the cost of consumer credit of goods and services sold; and
- (2) Provide the purchaser with a reasonable cancellation period for goods and services purchased.

(d) No licensee shall:

- (1) Make the purchase of goods and services sold under the authorization of subsection (b) of this section a condition of making a loan; or
- (2) Consider the borrower's decision to purchase, or not purchase, goods and services sold under the authorization of subsection (b) of this section a factor in its approval or denial of credit, or in its determination of the amount of or terms of

credit for the borrower.

(e) The licensee shall notify the borrower in writing that the purchase of the goods and services offered under the authorization under subsection (b) of this section is voluntary and that the borrower's decision whether or not to purchase the goods and services will not affect the licensee's decision to grant credit or the amount of or terms of the credit granted.

(f) If, at any time, the Commissioner has reason to believe that the conduct of any other business authorized under this section is contrary to the best interests of the borrowing public, the Commissioner shall hold a hearing pursuant to Chapter 150B of the General Statutes to determine whether or not to revoke the authority to conduct that business. The Commissioner shall revoke the authority to conduct any other business if he or she finds that the conduct of any other business authorized under this section is contrary to the best interests of the borrowing public.

(g) This section shall not be construed as authorizing the collection of any loans or charges in violation of the prohibitions contained in G.S. 53-190.

(h) The books, records, and accounts relating to loans shall be kept in such manner as the Commissioner of Banks prescribes as to delineate clearly the loan business from any other business authorized by the Commissioner. (1961, c. 1053, s. 1; 1967, c. 769, s. 1; 1971, c. 1212; 1981, c. 464, s. 2; 1985, c. 154, ss. 7, 9; 1987, c. 444, s. 2; 1989, c. 17, s. 2; 1991 (Reg. Sess., 1992), c. 765, s. 1.)

§ 53-173. Maximum rate of charge; computation of charges; limitation on interest after judgment; limitation on interest after maturity of the loan.

(a) Maximum Rate of Charge. -- Every licensee hereunder may contract for, compute, and receive on any loan of money, not exceeding three thousand dollars (\$3,000) in amount, charges at rates not exceeding thirty-six percent (36%) per annum on that part of the unpaid principal balance of any loan not in excess of six hundred dollars (\$600.00) and fifteen percent (15%) per annum on any remainder of such unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

(b) Computation of Charges. -- Charges on loans made pursuant to this section shall not be paid, deducted, or received in advance. Such charges shall not be compounded but charges on loans shall (i) be computed and paid only as a percentage of the unpaid principal balance or portion thereof and (ii) computed on the basis of the number of days actually elapsed; provided, however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid charges on the prior loan which have accrued within 90 days before the making of the new loan contract. For the purpose of computing charges, a day shall equal 1/365th of a year. Any payment made on a loan shall be applied first to any accrued interest and then to principal, and any portion or all of the principal balance may be prepaid at any time without penalty.

(c) Limitation on Interest after Judgment. -- If judgment be obtained against any party on any loan made under the provisions of this section neither the judgment nor the loan shall carry, from the date of the judgment, any interest in excess of eight percent (8%) per annum.

(d) Limitation of Interest after Maturity of Loan. -- After the maturity date of any loan contract made under the provisions of this section and until the loan contract is paid in full by cash, new loan, refinancing or otherwise, no charges other than interest at eight percent (8%) per annum shall be computed or collected from any party to the loan upon the unpaid principal balance of the loan.

(e) Repealed by Session Laws 1989, c. 17, s. 3.

(f) Subject to the limitations contained in this Article as to maximum rates, the Commission may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rates of charge, but, before determining or redetermining any such maximum rates, the Commission shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard and introduce evidence with respect thereto. The notice herein required may be given by mailing such notice to the offices of the licensees as shown in the records of the Commissioner of Banks. Any such changed maximum rates of charge shall not affect preexisting loan contracts lawfully entered into between any licensee and any borrower. (1961, c. 1053, s. 1; 1969, c. 1303, ss. 13, 17-22; 1973, c. 1042, s. 3; 1975, c. 110, s. 1; 1979, c. 33, s. 2; 1981, c. 561, ss. 1-3; 1983, c. 126, s. 13; 1989, c. 17, s. 3.)

§ 53-173.1: Repealed by Session Laws 1989, c. 17, s. 4.

§53-173.2. Repealed by Session Laws 1975, c. 110, s. 2.

§ 53-174: Repealed by Session Laws 1989, c. 17, s. 4.

§ 53-175. Fee for returned checks.

A licensee may collect the fee for returned checks to the extent permitted by G.S. 25-3-506. This section shall apply to any loan made by any licensee under this Article. (1961, c. 1053, s. 1; 1969, c. 1303, s. 23; 1981, c. 561, s. 4; 1983, c. 126, s. 12; 1989, c. 17, s. 5; 1995 (Reg. Sess., 1996), c. 742, s. 21.)

§ 53-176. Optional rates, maturities and amounts.

In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in installments not exceeding ten thousand dollars (\$10,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:

(1) With respect to a loan not exceeding seven thousand five hundred dollars (\$7,500), thirty

percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars (\$1,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

(2) With respect to a loan exceeding seven thousand five hundred dollars (\$7,500), eighteen percent (18%) per annum on the outstanding principal balance.

In addition to the interest permitted in this section, a licensee may assess at closing a reasonable credit investigation charge as agreed upon by the parties, not to exceed the actual cost of the credit investigation; provided that such charges may not be assessed more than twice in any 12-month period. The Commissioner of Banks may review charges assessed pursuant to this section and may adopt appropriate rules in accordance with G.S. 53-185.

The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect to make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State. (1961, c. 1053, s. 1; 1969, c. 1303, s. 12.1; 1981, c. 561, s. 7; 1983, c. 68, s. 1; c. 126, ss. 14, 15; 1989, c. 17, s. 6; 1995, c. 155, s. 1.)

§ 53-176.1: Repealed by Session Laws 1989, c. 17, s. 4.

§ 53-177. Recording fees.

The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to G.S. 25-9-302 et seq. or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan, or

(iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument: Provided, however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance policy, or for self insurance, shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose. (1961, c. 1053, s. 1; 1989, c. 17, s. 7.)

§ 53-178. No further charges; no splitting contracts; certain contracts void.

No further or other charges or insurance commissions shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this Article or by the Commissioner under G.S. 53-172. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this Article. All balances due to a licensee from any person as a borrower or as an endorser, guarantor or surety for any borrower or otherwise, or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. (1961, c. 1053, s. 1; 1991 (Reg. Sess., 1992), c. 765, s. 2.)

§53-179. Multiple-office loan limitations.

A licensee shall not grant a loan in one office to any borrower who already has a loan in another office operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or complete. This section shall apply to intrastate and interstate operations. A licensee shall take every reasonable precaution to prevent granting loans in violation of this section. Such loans granted inadvertently resulting in a total liability of three thousand dollars (\$3,000) or less, shall be adjusted to the rates applicable under the Article to a single loan of equivalent amount, and when the total liability on such loans is in excess of three thousand dollars (\$3,000), interest shall be adjusted to simple interest at eight percent (8%) per annum on the entire obligation. (1961, c. 1053, s. 1; 1969, c. 1303, s. 13; 1973, c. 1042, s. 6; 1981, c. 561, ss. 5, 6.)

§ 53-180. Limitations and prohibitions on practices and agreements.

(a) Time and Payment Limitation. -- Except as otherwise provided in this Article, no licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this Article providing for any scheduled repayment of principal more than 25 months from the date of making the contract if the cash advance is six hundred dollars (\$600.00) or less; more than 37 months from the date of making the contract if the cash advance is in excess of six hundred dollars (\$600.00) but not in excess of fifteen hundred dollars (\$1,500); more than 49 months from the date of making the contract if the cash advance is in excess of fifteen hundred dollars (\$1,500) but not in excess of two thousand five hundred dollars (\$2,500); or more than 61 months if the cash advance is in excess of two thousand five hundred dollars (\$2,500). Every loan contract shall provide for repayment

of the amount loaned in substantially equal installments, either of principal or of principal and charges in the aggregate, at approximately equal periodic intervals of time. Nothing contained herein shall prevent a loan being considered a new loan because the proceeds of the loan are used to pay an existing contract.

(b) No Assignment of Earnings. -- A licensee may not take an assignment of earnings of the borrower for payment or as security for payment of a loan. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and is revocable by the borrower. A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to the seller by an assignment of earnings.

(c) Limitation on Default Provisions. -- An agreement between a licensee and a borrower pursuant to a loan under this Article with respect to default by the borrower is enforceable only to the extent that (i) the borrower fails to make a payment as required by the agreement, or (ii) the prospect of payment, performance, or realization of collateral is significantly endangered or impaired, the burden of establishing the prospect of a significant endangerment or impairment being on the licensee.

(d) Prohibitions on Discrimination. -- No licensee shall deny any extension of credit or discriminate in the fixing of the amount, duration, application procedures or other terms or conditions of such extension of credit because of the race, color, religion, national origin, sex or marital status of the applicant or any other person connected with the transaction.

(e) Limitation on Attorney's Fees. -- With respect to a loan made pursuant to the provisions of G.S. 53-173, the agreement may not provide for payment by the borrower of attorney fees.

(f) No Real Property as Security. -- No licensee shall make any loan within this State which shall in any way be secured by real property.

(g) Deceptive Acts or Practices. -- No licensee shall engage in any unfair method of competition or unfair or deceptive trade practices in the conduct of making loans to borrowers pursuant to this Article or in collecting or attempting to collect any money alleged to be due and owing by a borrower.

(h) Limitations on Home Loans. -- No affiliate operating in the same office or subsidiary operating in the same office of a licensee shall make any home loan as defined in G.S. 24-1.1A(e) in a principal amount of less than three thousand dollars (\$3,000).

(i) Limitation on Conditions to Making Loans. -- A licensee or an affiliate operating in the same office or subsidiary operating in the same office of a licensee shall not make as a condition of any loan the refinancing of a borrower's home loan as defined in G.S. 24-1.1A(e) which is not currently in default.

(j) No Solicitation of Deposits. -- No licensee may directly or indirectly solicit from any borrower funds to be held on deposit in any bank; provided, however, a borrower may at his option, by way of a military allotment or other such program, designate a depository

to receive and disburse funds for a designated purpose. (1961, c. 1053, s. 1; 1969, c. 1303, s. 24; 1973, c. 1042, s. 7; 1979, c. 33, s. 3; 1981, c. 464, s. 3; 1985, c. 154, ss. 10-12; 1987, c. 444, s. 3; 1989, c. 17, ss. 8, 13.)

§ 53-181. Statements and information to be furnished to borrowers; power of attorney or confession of judgment prohibited.

(a) Contents of Statement Furnished to Borrower. -- At the time a loan is made, the licensee shall deliver to the borrower, or if there be two or more borrowers, to one of them a copy of the loan contract, or a written statement, showing in clear and distinct terms:

(1) The name and address of the licensee and one of the primary obligors on the loan;

(2) The date of the loan contract;

(3) Schedule of installments or descriptions thereof;

(4) The cash advance;

(5) The face amount of the note evidencing the loan;

(6) The amount collected or paid for insurance, if any;

(7) The amount collected or paid for filing or other fees allowed by this Article;

(8) The collateral or security for the loan.

(9) If the loan refinances a previous loan, the following relating to the refinanced loan: (i) the principal balance due; (ii) interest charged that is included in the new loan; and (iii) rebates on any credit insurance, listed separately.

(b) Schedule of Charges, etc., to Be Made Available; Copy Filed with Commissioner. -- Each licensee doing business in North Carolina shall make readily available to the borrower at each place of business such full and accurate schedule of charges and insurance premiums, including refunds and rebates, on all classes of loans currently being made by such licensee, as the Commissioner shall prescribe, and a copy thereof shall be filed in the office of the Commissioner of Banks.

(c) Power of Attorney or Confession of Judgment Prohibited. -- No licensee shall take any confession of judgment or permit any borrower to execute a power of attorney in favor of any licensee or in favor of any third person to confess judgment or to appear for the borrower in any judicial proceeding and any such confession of judgment or power of attorney to confess judgment shall be absolutely void. (1955, c. 1279; 1961, c. 1053, s. 1; 1989, c. 9, s. 17.)

§53-182. Payment of loans; receipts.

(a) After each payment made on account of any loan, the licensee shall give to the person making such payment a signed, dated receipt showing the amount paid and the balance

due on the loan. No receipt shall be required in the case of payments made by the borrower's check or money order, where the entire proceeds of the check or money order are applied to the loan. The use of a coupon book system shall be deemed in compliance with this section.

(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, any note, assignment, mortgage, deed of trust, or other instrument securing such loan, which no longer secures any indebtedness of the borrower to the licensee. (1955, c. 1279; 1961, c. 1053, s. 1.)

§53-183. Advertising, broadcasting, etc., false or misleading statements.

No licensee subject to this Article shall advertise, display, distribute, telecast, or broadcast or cause or permit to be advertised, displayed, distributed, telecasted, or broadcasted, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans. The Commissioner may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers. The Commissioner may permit or require licensees to refer in their advertising to the fact that their business is under State supervision, subject to conditions imposed by him to prevent an erroneous impression as to the scope or degree of protection provided by this Article. (1957, c. 1429, s. 3; 1961, c. 1053, s. 1.)

§ 53-184. Securing of information; records and reports; allocations of expense.

(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine such records at any reasonable time. Such books and records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner of Banks; provided, however, that such books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain such books and records at a location other than the licensed office location if such location is approved by the Commissioner; provided that, upon such requirements as may be imposed by the Commissioner of Banks, there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that such books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee

to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by him in such examination.

(b) Each licensee shall file annually with the Commissioner of Banks on or before the thirty-first day of March for the 12 months' period ending the preceding December 31, reports on forms prescribed by the Commissioner. Reports shall disclose in detail and under appropriate headings the assets and liabilities of the licensee, the income, expense, gain, loss, and any other information as the Commissioner may require. Reports shall be verified by the oath or affirmation of the owner, manager, president, vice-president, cashier, secretary or treasurer of the licensee.

(c) If a licensee conducts another business or is affiliated with other licensees under this Article, or if any other situation exists under which allocations of expense are necessary, the licensee or licensees shall make such allocation according to appropriate and reasonable accounting principles.

(d) Repealed by Session Laws 1997, c. 285, s.2.

(1955, c. 1279; 1957, c. 1429, s. 4; 1961, c. 1053, s. 1; 1981, c. 561, s. 8; 1989, c. 17, s. 10; 1997, c. 285, s. 2.)

§53-185. Rules and regulations by Banking Commission and Commissioner.

The State Banking Commission is hereby authorized, empowered and directed to make all rules and regulations deemed by the Commission to be necessary in implementing this Article and in providing for the protection of the borrowing public and the efficient management of such licensees and to give all necessary instructions to such licensees for the purpose of interpreting this Article; provided, the Commissioner is hereby authorized to make such rules and regulations and issue such orders as he deems necessary and desirable in implementing and carrying out the provisions of G.S. 53-184. And it shall be the duty of all such licensees, their officers, agents and employees, to comply fully with all such rules, regulations and instructions. When promulgated, any rule or regulation shall be forwarded by mail to each licensee at its licensed place of business at least 20 days prior to its effective date. (1955, c. 1279; 1961, c. 1053, s. 1.)

§53-186. Commissioner to issue subpoenas, conduct hearings, give publicity to investigations, etc.

The Commissioner of Banks shall have the power and duty to issue subpoenas including subpoenas duces tecum, and compel attendance of witnesses, administer oaths, conduct hearings and transcribe testimony in making the investigations and conducting the hearings provided for herein or in the other discharge of his duties, and to give such publicity to his investigations and findings as he may deem best for the public interest. (1957, c. 1429, s. 5; 1961, c. 1053, s. 1.)

§53-187. Injunctive powers; receivers.

Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to violate any provision of this Article, he may in addition to all actions provided for

in this Article, and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation; and an action may be brought in the name of the Commissioner on the relation of the State of North Carolina to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this Article through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court. (1957, c. 1429, s. 6; 1961, c. 1053, s. 1.)

§ 53-188. Review of regulations, order or act of Commission or Commissioner.

The Commission shall have full authority to review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this Article and any person aggrieved by any such rule, regulation, order or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to an appeal pursuant to G.S. 53-92. (1957, c. 1429, s. 6; 1961, c. 1053, s. 1; 1973, c. 1331, s. 3; 1987, c. 827, s. 13; 1995, c. 129, s. 29.)

§ 53-189. Insurance.

(a) Credit life, credit accident and health, credit unemployment, and credit property insurance may be written in accordance with the provisions of Article 57 of Chapter 58 of the General Statutes.

(b) The premium or cost of credit life, credit accident and health, credit unemployment, or credit property insurance, when written by or through any lender or other creditor, its affiliate, associate or subsidiary shall not be deemed as interest or charges or consideration or an amount in excess of permitted charges in connection with the loan or credit transaction and any gain or advantage to any lender or other creditor, its affiliate, associate or subsidiary, arising out of the premium or commission or dividend from the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, civil or criminal, of this State, or of any rule, regulation or order issued by any regulatory authority of this State. (1961, c. 1053, s. 1; 1969, c. 1303, s. 25; 1975, c. 660, s. 2; 1981, c. 759, s. 10; c. 876; 1987, c. 826, s. 10; 1993, c. 226, s. 14.)

§ 53-190. Loans made elsewhere.

(a) No loan contract made outside this State in the amount or of the value of ten thousand dollars (\$10,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article have been charged, contracted for, or

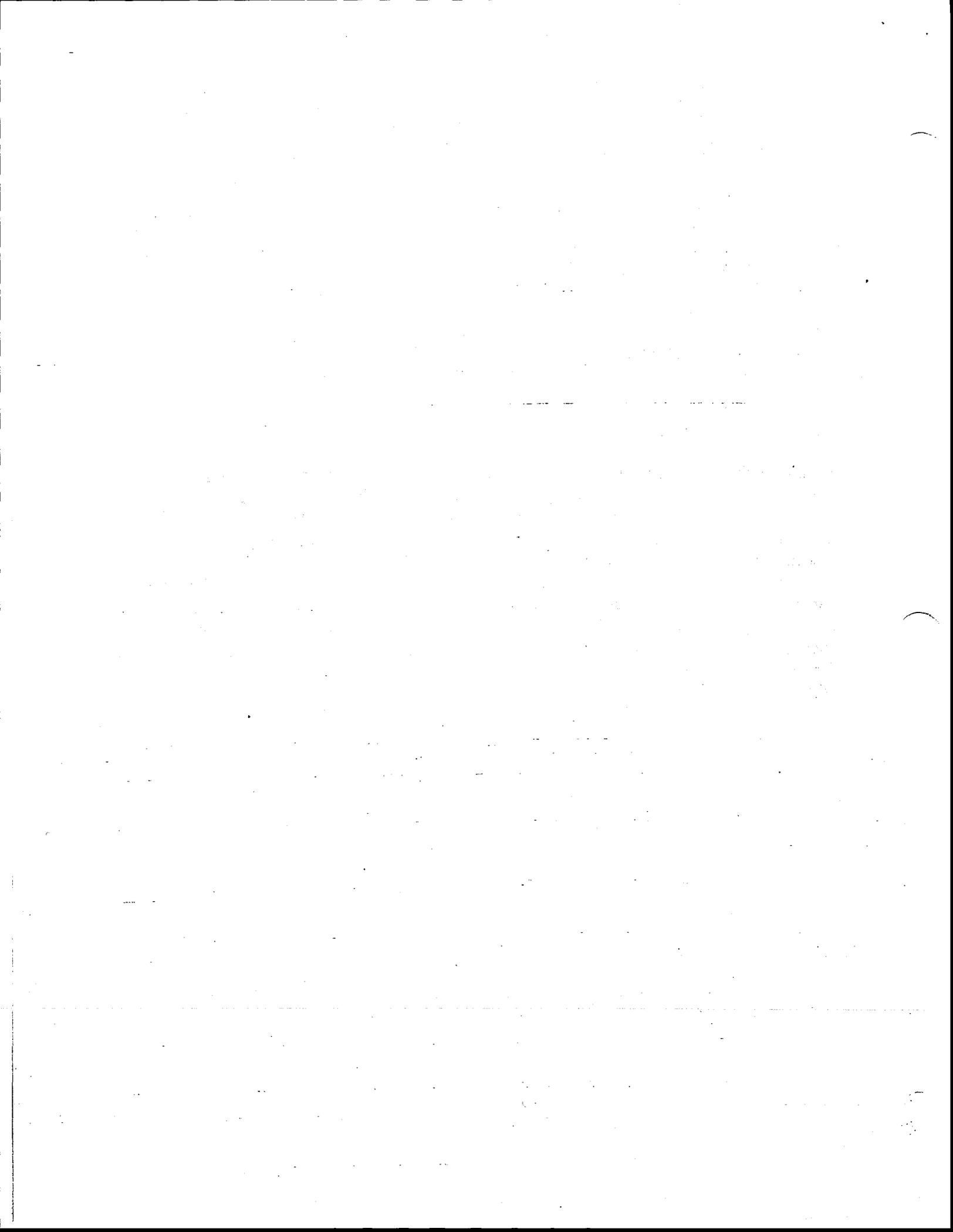
received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.

(b) If any lender or agent of a lender who makes loan contracts outside this State in the amount or of the value of ten thousand dollars (\$10,000) or less, comes into this State to solicit or otherwise conduct activities in regard to such loan contracts, then such lender shall be subject to the requirements of this Article.

(c) No lender licensed to do business under this Article may collect, or cause to be collected, any loan made by a lender in another state to a borrower, who was a legal resident of North Carolina at the time the loan was made. The purchase of a loan account shall not alter this prohibition. (1961, c. 1053, s. 1; 1967, c. 769, s. 2; 1969, c. 1303, s. 13; 1973, c. 1042, s. 8; 1979, c. 706, s. 2; 1989, c. 17, s. 11.)

§53-191. Businesses exempted.

Nothing in this Article shall be construed to apply to any person, firm or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans. (1955, c. 1279; 1957, c. 1429, s. 8; 1961, c. 1053, s. 1; 1969, c. 1303, s. 26.)



GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-391
SENATE BILL 312

AN ACT TO REGULATE CHECK-CASHING BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 22.

"Check-Cashing Businesses.

"§ 53-275. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) 'Cashing' means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.
- (2) 'Check-cashing service' means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.
- (3) 'Commission' means the State Banking Commission.
- (4) 'Commissioner' means the Commissioner of Banks.
- (5) 'Licensee' means a person or entity licensed to engage in a check-cashing business under this Article.
- (6) 'Person' means an individual, partnership, association, or corporation.

"§ 53-276. License required.

No person or other entity may engage in the business of cashing checks, drafts, or money orders for consideration without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments.

"§ 53-277. Exemptions.

(a) This Article shall not apply to:

- (1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and
- (2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars (\$2.00) is charged for the service.

(b) A person licensed under Article 16 of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for

purposes of the remaining provisions of this Article. This exemption does not apply to an agent of a person licensed under Article 16 of this Chapter.

"§ 53-278. Application for license; investigation; application fee.

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

- (1) The name and address of the applicant.
- (2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.
- (3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.
- (4) The addresses of the locations of the business to be licensed.
- (5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar (\$250.00) application fee and a five hundred dollar (\$500.00) investigation fee. These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars (\$250.00) plus a fifty dollar (\$50.00) fee for each branch location certificate issued under a license.

"§ 53-279. Liquid assets required; other qualifications; denial of license; hearing.

(a) Every licensee and applicant shall have and maintain liquid assets of at least fifty thousand dollars (\$50,000) per licensee.

(b) Upon the filing and investigation of an application, and compliance by the applicant with G.S. 53-278, and this section, the Commissioner shall issue and deliver to the applicant the license applied for to engage in business under this Article at the locations specified in the application, provided that the Commissioner finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. If the Commissioner fails to make such findings, no license shall be issued, and the Commissioner shall notify the applicant of the denial and the reasons therefor. The applicant shall be entitled to an informal hearing on the denial provided the applicant requests the hearing in writing within 30 days after the Commissioner has mailed the notice required under this subsection to the applicant. In the event of a hearing, which shall be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after hearing, issue a written order granting or denying the application.

"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

- (1) Three percent (3%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for checks issued by the federal government, State government, or any agency of the State or federal government, or any county or municipality of this State.

- (2) Ten percent (10%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for personal checks.
- (3) Five percent (5%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of any check unless the account from which the check being presented is drawn is legitimate, open, and active. Except as provided by G.S. 53-281(a), any licensee who cashes a check for a fee shall deposit the check not later than three business days from the date the check is cashed.

(c) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.

"§ 53-281. Postdated or delayed deposit checks.

(a) A licensee may defer the deposit of a personal check cashed for a customer for up to 31 days pursuant to the provisions of this section.

(b) The face amount of any postdated or delayed deposit check cashed pursuant to this section shall not exceed three hundred dollars (\$300.00).

(c) Each postdated or delayed deposit check cashed by a licensee shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR). The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date not later than 31 days from the date the check is cashed.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or delayed deposit check in excess of fifteen per cent (15%) of the face amount of the check.

(e) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee. A licensee shall not, for any consideration, renew or otherwise extend any postdated or delayed check or withhold such check from deposit for any period beyond the time set forth in the written agreement with the customer.

"§ 53-282. Record keeping; receipt requirements.

(a) Every person required to be licensed under this Article shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

(b) The licensee shall ensure that each customer cashing a check shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged.

(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

"§ 53-283. Prohibited practices.

No person required to be licensed under this Article shall do any of the following:

- (1) Charge fees in excess of those authorized under this Article.
- (2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.
- (3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.
- (4) Conduct business at premises or locations other than locations licensed by the Commissioner.
- (5) Engage in unfair, deceptive, or fraudulent practices.
- (6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

"§ 53-284. Suspension and revocation of license; grounds; procedure.

(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

- (1) Violated this Article or applicable State or federal law or rules.
- (2) Made a false statement on the application for a license under this Article.
- (3) Refused to permit investigation by the Commissioner authorized under this Article.
- (4) Failed to comply with an order of the Commissioner.
- (5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.
- (6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(b) The Commissioner may not suspend or revoke any license issued under this Article unless the licensee has been given notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes.

"§ 53-285. Cease and desist orders.

If the Commissioner determines that a person required to be licensed under this Article has violated this Article or rules adopted pursuant to it, then the Commissioner may, upon notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes, order the person to cease and desist from the violations and to comply with this Article. The Commissioner may enforce compliance with an order issued pursuant to this section by the imposition and collection of civil penalties authorized under this Article.

"§ 53-286. Civil penalties and restitution.

The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars (\$1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

"§ 53-287. Criminal penalties.

A violation of G.S. 53-276 by a person required to obtain a license under this Article is a Class I felony. Each transaction involving the unlawful cashing of a check, draft, or money order constitutes a separate offense.

§ 53-288. Commissioner to adopt rules.

The Commissioner may adopt rules necessary to carry out the purposes of this Article, to provide for the protection of the public, and to assist licensees in interpreting and complying with this Article.

"§ 53-289. Commission may review rules, orders, or acts by Commissioner.

The Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article, and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done."

Section 2. The Commissioner of Banks shall report to the 2001 General Assembly on the practices of licensees with regard to checks cashed pursuant to the provisions of G.S. 53-281, including any evidence as to consumer complaints, unfair or deceptive trade practices, and the frequency of repeat use by individuals of postdated or delayed deposit checks. It is the intent of the General Assembly that the sunset contained in Section 3 of this act be repealed if there is no evidence of excessive complaints or unfair and deceptive trade practices.

Section 3. This act becomes effective October 1, 1997, and the provisions of G.S. 53-281 shall expire on July 31, 2001.

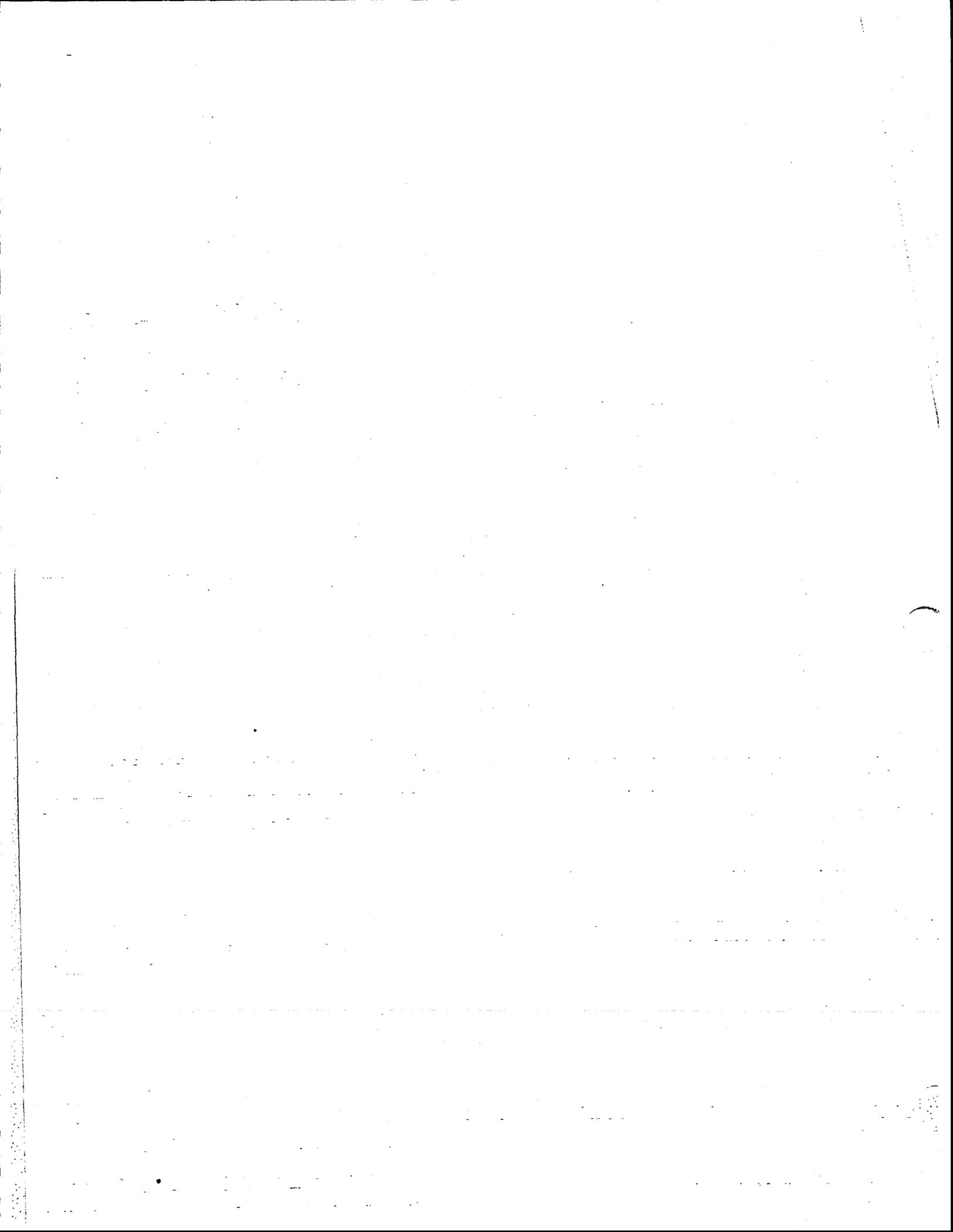
In the General Assembly read three times and ratified this the 7th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

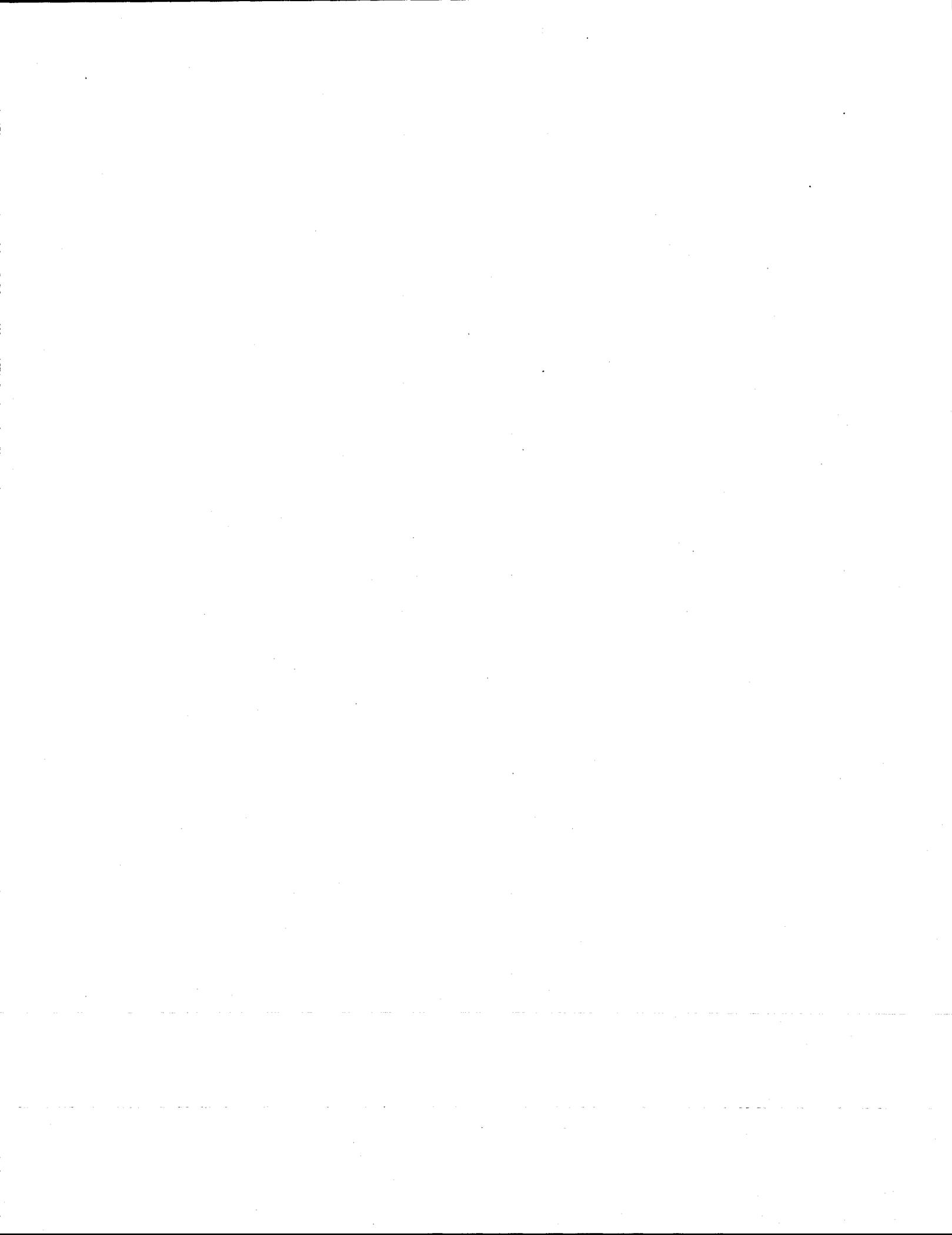
s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:35 a.m. this 14th day of August, 1997



APPENDIX D



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

99-ROZ-017.2

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Revisions to Consumer Lending.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE APPLICABLE INTEREST RATES ON LOANS MADE
3 PURSUANT TO THE CONSUMER FINANCE ACT UNDER CERTAIN
4 CIRCUMSTANCES, TO ESTABLISH A LOAN PROCESSING FEE FOR CERTAIN
5 LOANS, TO ALLOW BORROWERS TO CANCEL LOANS UNDER CERTAIN
6 CIRCUMSTANCES, TO ALLOW LENDERS TO CHARGE A LATE PAYMENT
7 PENALTY UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE DISCLOSURE ON
8 SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, AND TO
9 ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF
10 OPTICAL IMAGE DISKS.
11 The General Assembly of North Carolina enacts:
12 Section 1. G.S. 53-176 reads as rewritten:
13 "\$ 53-176. Optional rates, maturities and amounts.
14 (a) In lieu of making loans in the amount and at the charges
15 stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a
16 licensee may at any time elect to make loans in installments not
17 exceeding ten thousand dollars (\$10,000) and which shall not be
18 repayable in less than six months or more than 84 months and
19 which shall not be secured by deeds of trust or mortgages on real
20 estate and which are repayable in substantially equal consecutive

1 monthly payments and to charge and collect interest in connection
2 therewith which shall not exceed the following actuarial rates:

- 3 (1) ~~With respect to a loan not exceeding seven thousand~~
4 ~~five hundred dollars (\$7,500), thirty percent (30%)~~
5 ~~per annum on that part of the unpaid principal~~
6 ~~balance not exceeding one thousand dollars (\$1,000)~~
7 ~~and eighteen percent (18%) per annum on the~~
8 ~~remainder of the unpaid principal balance. Interest~~
9 ~~shall be contracted for and collected at the single~~
10 ~~simple interest rate applied to the outstanding~~
11 ~~balance that would earn the same amount of interest~~
12 ~~as the above rates for payment according to~~
13 ~~schedule. two thousand dollars (\$2,000), twenty-~~
14 ~~eight percent (28%) per annum on the outstanding~~
15 ~~principal balance.~~
16 (2) ~~With respect to a loan exceeding seven thousand~~
17 ~~five hundred dollars (\$7,500), eighteen percent~~
18 ~~(18%) per annum on the outstanding principal~~
19 ~~balance. two thousand dollars (\$2,000) but not more~~
20 ~~than three thousand five hundred dollars (\$3,500),~~
21 ~~twenty-five percent (25%) per annum on the~~
22 ~~outstanding principal balance.~~
23 (3) ~~With respect to a loan exceeding three thousand~~
24 ~~five hundred dollars (\$3,500) but not more than~~
25 ~~five thousand dollars (\$5,000), twenty-three~~
26 ~~percent (23%) per annum on the outstanding~~
27 ~~principal balance.~~
28 (4) ~~With respect to a loan exceeding five thousand~~
29 ~~dollars (\$5,000) but not more than seven thousand~~
30 ~~five hundred dollars (\$7,500), twenty-one percent~~
31 ~~(21%) per annum on the outstanding principal~~
32 ~~balance.~~
33 (5) ~~With respect to a loan exceeding seven thousand~~
34 ~~five hundred dollars (\$7,500), eighteen percent~~
35 ~~(18%) per annum on the outstanding principal~~
36 ~~balance.~~

37 (b) ~~In addition to the interest permitted in this section, a~~
38 ~~licensee may assess at closing a reasonable credit investigation~~
39 ~~charge as agreed upon by the parties, fee for processing the loan~~
40 ~~equal to five percent (5%) of the cash advance, not to exceed the~~

1 ~~actual cost of the credit investigation; twenty-five dollars~~
2 ~~(\$25) for loans not in excess two thousand dollars (\$2,000), and~~
3 ~~not to exceed fifty dollars (\$50) for loans in excess of two~~
4 ~~thousand dollars (\$2,000). provided that such charges~~ Except as
5 otherwise provided by this subsection, the processing fee may not
6 be assessed only once for each loan. ~~more than twice in any~~
7 ~~12-month period. If a loan in excess of two thousand dollars~~
8 ~~(\$2,000) is renewed, extended, or refinanced, in which the~~
9 ~~borrower receives a new cash advance in an amount equal to at~~
10 ~~least twenty percent (20%) of the outstanding principal balance~~
11 ~~of the existing loan, a fee for processing the loan may be~~
12 ~~assessed not to exceed fifty dollars (\$50). For all other~~
13 ~~renewed extended or refinanced loans, a licensee may assess at~~
14 ~~closing a fee for processing the loan equal to five percent(5%)~~
15 ~~of the cash advance, not to exceed twenty-five dollars (\$25) and~~
16 ~~the fee may not be assessed more than twice in a 12 month period,~~
17 ~~the initial processing fee being the first. It shall be unlawful~~
18 ~~for any lender to structure a loan for the specific purpose of~~
19 ~~obtaining a higher fee. The penalty for such action is~~
20 ~~forfeiture of the fee. The Commissioner of Banks may review~~
21 ~~charges assessed pursuant to this section subsection and may~~
22 ~~adopt appropriate rules in accordance with G.S. 53-185.~~
23 (c) The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-
24 180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans
25 made pursuant to this section.
26 (d) Any licensee under this Article shall have the right to
27 elect to make loans in accordance with this section by the filing
28 of a written statement to that effect with the Commissioner and
29 on date of such notification begin making loans regulated by this
30 section for the following 12 months. Annually after such election
31 a licensee may elect to make loans in accordance with this
32 section unless the licensee notifies in writing the Commissioner
33 of its intention to terminate such election.
34 (e) The due date of the first monthly payment shall not be more
35 than 45 days following the disbursement of funds under any such
36 installment loan. A borrower under this section may prepay all or
37 any part of a loan made under this section without penalty. No
38 more than twice in a 12 month period, a borrower may cancel a
39 loan with the same licensee within 15 calendar days after
40 disbursement of the loan proceeds without incurring or paying

1 interest so long as the amount of the loan, minus any fees or
2 charges, is returned to or received by the licensee.

3 (f) No individual, partnership, or corporate licensee and no
4 corporation which is the parent, subsidiary or affiliate of a
5 corporate licensee that is making loans under this Article except
6 as authorized in this section, shall be permitted to make loans
7 under the provisions of this section. Any corporate licensee or
8 individual or partnership licensee that elects to make loans in
9 accordance with the provisions of this section shall be bound by
10 that election with respect to all of its offices and locations in
11 this State and all offices and locations in this State of its
12 parent, subsidiary or affiliated corporate licensee, or with
13 respect to all of his or their offices and locations in this
14 State.

15 (g) A lender may charge a party to a loan or extension of
16 credit governed by this section a late payment charge not to
17 exceed five percent (5%) of the payment due or ten dollars (\$10),
18 whichever is greater, for any payment past due for fifteen days
19 or more; provided, in no case shall the late charge exceed the
20 outstanding principal balance. If a late payment charge has been
21 once imposed with respect to a late payment, no late charge shall
22 be imposed with respect to any future payment which would have
23 been timely and sufficient but for the previous default."

24 Section 2. G.S. 53-181(a) is amended by adding a new
25 subdivision to read:

26 "(10) In addition to any disclosures otherwise provided
27 by law, a licensee soliciting loans using a
28 facsimile or negotiable check shall disclose the
29 following:

30 'THIS IS A SOLICITATION FOR A LOAN. READ THE
31 ENCLOSED DISCLOSURES BEFORE SIGNING THIS
32 AGREEMENT.'

33 This notice shall be printed in not less than
34 twelve point bold type and shall appear
35 conspicuously on the offer."

36 Section 3. G.S. 53-182(b) reads as rewritten:

37 "(b) Upon payment of any loan in full, a licensee shall cancel
38 and return to the borrower, within a reasonable length of time,
39 originals or copies of any note, assignment, mortgage, deed of

1 trust, or other instrument securing such loan, which no longer
2 secures any indebtedness of the borrower to the licensee."

3 Section 4. G.S. 53-184(a) reads as rewritten:

4 "(a) Each licensee shall maintain all books and records
5 relating to loans made under this Article required by the
6 Commissioner of Banks to be kept, and the Commissioner, his
7 deputy, or duly authorized examiner or agent or employee is
8 authorized and empowered to examine such records at any
9 reasonable time. Such books and records may be maintained in the
10 form of magnetic tape, magnetic ~~disk~~ disk, optical disk, or other
11 form of computer, electronic or microfilm media available for
12 examination on the basis of computer printed reproduction, video
13 display or other medium acceptable to the Commissioner of Banks;
14 provided, however, that such books and records so kept must be
15 convertible into clearly legible tangible documents within a
16 reasonable time. Any licensee having more than one licensed
17 office may maintain such books and records at a location other
18 than the licensed office location if such location is approved by
19 the Commissioner; provided that, upon such requirements as may be
20 imposed by the Commissioner of Banks, there shall be available to
21 the borrower at each licensed location or such other location
22 convenient to the borrower, as designated by the licensee,
23 complete loan information; and provided further that such books
24 and records of each licensed office shall be clearly segregated.
25 When a licensee maintains its books and records outside of North
26 Carolina, the licensee shall make them available for examination
27 at the place where they are maintained and shall pay for all
28 reasonable and necessary expenses incurred by the Commissioner in
29 conducting such examination. Where the data processing for any
30 licensee is performed by a person other than the licensee, the
31 licensee shall provide to the Commissioner of Banks a copy of a
32 binding agreement between the licensee and the data processor
33 which allows the Commissioner of Banks, his deputy, or duly
34 authorized examiner or agent or employee to examine that
35 particular data processor's activities pertaining to the licensee
36 to the same extent as if such services were being performed by
37 the licensee on its own premises; and, notwithstanding the
38 provisions of G.S. 53-167 and 53-122, when billed by the
39 Commissioner of Banks, the licensee shall reimburse the

1 Commissioner of Banks for all costs and expenses incurred by him
2 the Commissioner in such examination."

3 Section 5. This act becomes effective October 1, 2000,
4 and applies to loans made on or after that date.

5



99-ROZ-017.2: Revisions to Consumer Lending

BILL ANALYSIS

Committee: LRC-Consumer Protection
Committee
Date: April 24, 2000
Version: 99-ROZ-017.2

Introduced by:
Summary by: Karen Cochrane Brown
Committee Counsel

SUMMARY:

99-ROZ-017.2 amends G.S. 53-176 to eliminate the blended interest rate structure and replace it with a step rate structure. It also authorizes optional rate lenders to charge a loan processing fee and late payment penalty. The draft also allows borrowers to cancel loans under certain circumstances and requires additional disclosure on solicitation of loans by facsimile or negotiable check.

CURRENT LAW:

The North Carolina Consumer Finance Act authorizes the Commissioner of Banks to license and to supervise loan companies, which make direct consumer loans of \$10,000 or less. A licensee must meet several statutory requirements including, maintaining loanable assets of not less than \$25,000. Lenders that do not charge interest rates higher than those permitted by Chapter 24 are exempt for this Act. Also exempted are banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations, production credit associations, pawn brokers, and installment paper dealers.

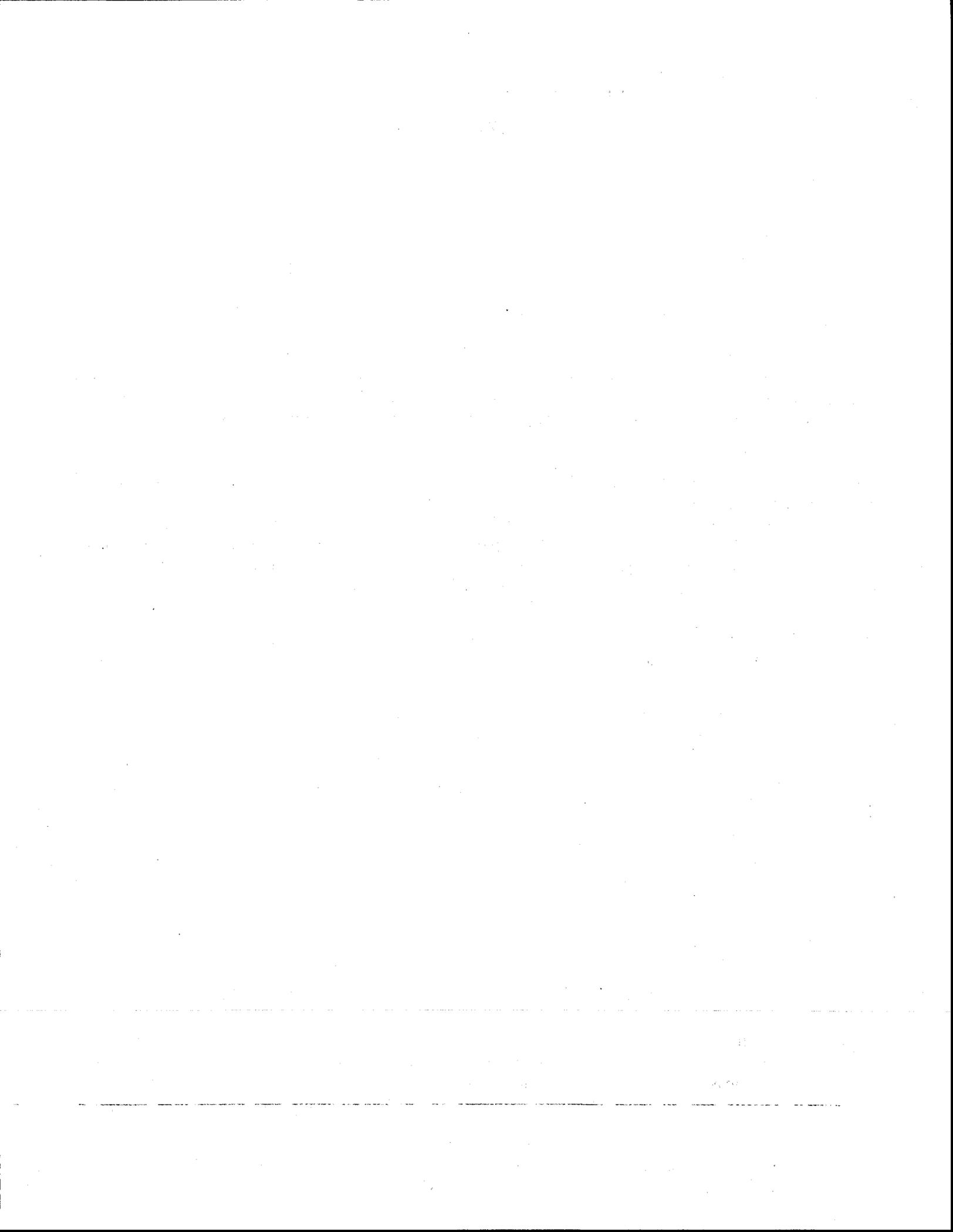
The statute creates two tiers of lenders. G.S. 53-173 allows interest charges of 36% per year on that part of the unpaid principal balance, which does not exceed \$600.00, and 15% per year on that portion which is more than \$600 but not more than \$3,000.

G.S. 53-176 authorizes optional rates for those lenders who elect to make loans of \$10,000 or less and who so notify the Commissioner. These lenders may charge interest at the rate of 30% per year on that part of the unpaid principal balance, which does not exceed \$1,000, and 18% per year on the remainder, which does not exceed \$7,500. If the principal balance is more than \$7,500, the maximum rate is 18% per year on the entire loan. This creates a blended rate for most loans made under this Article.

BILL ANALYSIS:

Section 1:

- Amends G.S. 53-176 to eliminate the current interest rate structure and replaces it with a stepped rate that ranges from 28% for loans under \$2,000, to 25% for loans between \$2,001 and \$3,500, to 23% for loans between \$3,501 and \$5,000, to 21% for loans between \$5,001 and \$7,500, to 18% for loans over \$7,500.
- Authorizes lenders to charge a loan processing fee of the greater of 5% or \$25 for loans up to \$2,000; and the greater of 5% or \$50 for loans in excess of \$2,000. The fee may only be charged once per loan, except if the loan is renewed, extended or refinanced, and the borrower receives a new cash advance of at least 20% of the unpaid balance, then a fee of up to \$50 can be charged, if the loan exceeds \$2,000. For all other renewed, extended, or refinanced loans, the lender may charge a



99-ROZ-017.2

Page 2

processing fee of the greater of 5% or \$25. The fee may not be assessed more than twice in a 12-month period.

- Allows a borrower to cancel a loan within 15 days after disbursement by returning the proceeds minus any fees or charges. This right may only be exercised twice in a 12-month period against the same lender.
- Allows a lender to charge a late payment fee of the greater of 5% of the payment due or \$10, when the payment is past due for 15 days.

Section 2

Requires lenders who solicit loans using facsimile or negotiable checks to place a disclosure conspicuously on the offer, stating that the document is a solicitation for a loan.

Section 3

Requires the lender to return to the borrower both originals and copies of any note, or other evidence of indebtedness, upon payment of the loan in full.

Section 4

Allows licensees to make certain required reports to the Commissioner of Banks by means of optical disk.

Section 5

The act becomes effective October 1, 2000, and applies to loans made on or after that date.

